



## TOWN OF BLACK MOUNTAIN

Town Hall, 160 Midland Avenue, Black Mountain, NC 28711

Date: May 27, 2021 Time: 8:30 a.m.

Special Call Agenda

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*Should you need other assistance or accommodation for this meeting, please contact  
Town Clerk Savannah Parrish at 419-9310, or by email at [savannah.parrish@townofblackmountain.org](mailto:savannah.parrish@townofblackmountain.org)  
(828) 419-9300 / TDD (800) 735-2962*

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### 1. CALL TO ORDER

- Welcome

### 2. NEW BUSINESS

- A. Chapter 160D Presentation – Anna Stearns

### 3. COMMUNICATION FROM STAFF

- A. Town Manager – Josh Harrold

### 1. COMMUNICATION FROM MAYOR AND TOWN COUNCIL

### 2. ADJOURNMENT

Josh Harrold  
Town Manager



## **PUBLIC NOTICE**

### **SPECIAL CALL MEETING**

**Thursday, May 27, 2021 at 8:30 a.m.**

The Black Mountain Town Council will meet in special call meeting on **Thursday, May 27, 2021 at 8:30 a.m m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC. The purpose of this meeting is to review information regarding Chapter 160D of the North Carolina General Statutes, which consolidates current city- and county-enabling statutes for development regulations.

The meeting is open to the public.

*Savannah M. Parrish*  
Savannah Parrish  
Town Clerk

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*Posted to the Town Bulletin Board 5/24/21*

**AN ORDINANCE AMENDING THE TEXT OF THE  
TOWN OF BLACK MOUNTAIN LAND USE CODE**

**WHEREAS**, the Town of Black Mountain has the authority, pursuant to Part 3 of Article 19 of Chapter 160A, now Section III of Chapter 1 of 160D, of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and amend said regulations from time to time in the interest of the public health, safety and welfare; and

**WHEREAS**, the Town of Black Mountain's Land Use Code must at all times comply with and conform to the requirements of North Carolina's General Statutes; and

**WHEREAS**, Session Law 2019-111, enacted on July 11, 2019 reorganized, recodified, and consolidated existing statutes authorizing municipalities and county governments to enact land use and development regulations; and

**WHEREAS**, Session Law 2020-25 requires that all local governments amend existing land development regulations to comply with the revised statutes no later than July 1, 2021; and

**WHEREAS**, after notice duly given, a public hearing was held on April 26, 2021 at the regularly scheduled meeting of the Town of Black Mountain Planning Board;

**WHEREAS**, the Town of Black Mountain Planning Board has reviewed the proposed text amendments to the Land Use Code (LUC) and recommends that it is consistent with the Comprehensive Plan because the proposed amendments consolidate, reorganize and modernize the development regulations for the Town of Black Mountain consistent with Vision Statement 9: Community Planning

**WHEREAS**, the Town of Black Mountain Planning Board recommends the proposed text amendments for enactment by the Town Council;

**WHEREAS**, after notice duly given, a public hearing was held on June 14, 2021 at the regularly scheduled meeting of the Town Council; and

**WHEREAS**, the Town Council find this Ordinance is consistent with the Town's Comprehensive Plan because the proposed amendments consolidate, reorganize and modernize the development regulations for the Town of Black Mountain consistent with Vision Statement 9: Community Planning and that it is reasonable and in the public interest to maintain land use regulations in accordance with North Carolina General Statutes.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BLACK MOUNTAIN, MEETING IN REGULAR SESSION ON JUNE 14, 2021 AND WITH A MAJORITY OF THE COUNCIL MEMBERS VOTING IN THE AFFIRMATIVE, THE FOLLOWING:**

That the Land Use Code appended to the Black Mountain Code of Ordinances be amended as follows:

**Section 1. The phrase "Board of Aldermen" is deleted in each place that such phrase appears and replaced with the phrase "Town Council."**

**Section 2.** The phrase “Zoning Board of Adjustment” is deleted in each place that such phrase appears and replaced with the phrase “Board of Adjustment.”

**Section 3.** The phrase “fire inspector” is deleted in each place that such phrase appears and replaced with the phrase “fire marshal.”

**Section 4.** Section 1.1 of Chapter 1 of the Land Use Code is hereby amended as follows:

1.1.2 - Authority and jurisdiction.

These regulations are adopted pursuant to the authority granted by **Chapter 160D** of the North Carolina General Statutes (NCGS), ~~Article 19; Sections 160A-381 through 160A-392.~~. The provisions of this code shall be applicable to all property within the town limits ~~and its extra-territorial jurisdiction.~~

1.1.3 - Purpose and intent.

A. . . . , in order to protect and promote the health, safety and general welfare of the town ~~and any of its extraterritorial jurisdictions~~ in accordance with the General Statutes of the State of North Carolina and the Town of Black Mountain Code of Ordinances. It is also the intent of the Town of Black Mountain ~~Board of Alderman~~ **Town Council** that ~~theis~~ land use ~~development~~ code . . .

. . .

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

A. **Development** regulations set forth **herein** shall be considered minimum regulations and shall apply uniformly to each class or kind of structure or land ~~except as unless~~ specifically **otherwise** provided ~~for elsewhere within the land use code.~~

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

. . .

1.1.5 - Relationship with adopted plans.

The administration, enforcement, and amendment of this ~~ordinance code~~ shall be . . .

1.1.6 - Relationship with other regulations and existing ~~ordinances development regulations.~~

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

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

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

A. It is not intended that this ~~ordinance~~code repeal, abrogate, annul, impair, or interfere with any existing easements, valid covenants, deed restrictions, agreements, or vested rights which have been established pursuant to ~~G.S. 160A-385.NCGS § 160D-108 and -108.1.~~

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

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

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

1.1.8 - Separability.

If any section or specific provision of this ~~ordinance~~code or any ~~regulating~~regulation or district boundary arising from it is found by a court to be invalid or unenforceable for any reason, the decision of the court shall not affect the validity or enforceability of any other section, provision, standard, or district boundary of these ~~development~~ regulations except the provision in question. The other portions of these ~~development~~ regulations not affected by the decision of the court shall remain in full force and effect. Should any section or provision of this ~~ordinance~~code be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ~~ordinance~~code as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

1.1.9 - Previous ordinance repealed.

~~Otherwise, these regulations~~This code shall generally supersede, repeal, and replace the previous Town of Black Mountain ~~Title XV Land Usage Regulations and Provisions~~Land Use Code, upon the effective date of ~~March 14, 2010.~~ July 1, 2021.

**Section 5. Section 1.2.1 and 1.2.2 of Chapter 1 of the Land Use Code are hereby amended as follows:**

1.2.1 - Purpose.

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

1.2.2 – Guidance for interpretation.

A. Interpretations shall be guided by statements of intent or purpose within the context of the ~~development~~ regulations. . .

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

C. Interpretation of commonly used terms and words.

...

3. The words "person" or "one" or "no one" includes ~~aan individual, partnership,~~ firm, association, **joint venture, public or private** corporation, trust-~~company,~~, **estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina** and ~~individual~~-its agents and political subdivisions, or other legal entity.

...

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

**Section 6. Section 1.2.3 of Chapter 1 of the Land Use Code is hereby amended as follows (new definitions shall be inserted in alphabetical order):**

1.2.3 – Definitions.

...

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

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

...

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

...

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

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

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

...

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

...

***Bed and breakfast home:*** A private, owner-occupied residences with ~~no more than six~~**one to four** guest rooms where overnight accommodations and a morning meal are provided to transients for compensation, and where the bed and breakfast use is subordinate and incidental to the main residential use of the building. The ~~home owner~~**homeowner** shall reside on site and employment shall not exceed the equivalent of one full-time employee in addition to the owner.

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

*Bedroom:* ~~A room planned and intended for sleeping, separated from other rooms.~~ **See sleeping room.**

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

...

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

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

...

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

...

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

...

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

...

~~*Conditional use:* A means by which special conditions may be imposed in the furtherance of the purpose and intent of the land use code or to protect the health, safety and welfare of the town's citizens as regards a specific development request.~~

~~*Conditional use permits:* A permit granted by the zoning board of adjustment as a prerequisite to any use or development listed as a conditional use. See also "Special use."~~

...



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

...

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

**Developer:** ~~Any~~ A person ~~or firm engaged in who undertakes any~~ development ~~or redevelopment and who is the owner of the property. To be developed or who has been authorized by the owner to undertake development on that property.~~

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

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

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

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

...

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

...

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

...

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

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

**Dwelling unit:** ~~A room or combination of rooms designed for year-round habitation, containing a bathroom and kitchen. A single unit providing complete independent living facilities and designed as a residence for one or more persons, including permanent provisions for one household or family living, sleeping, eating, cooking and sanitation, including the following types:~~



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

...

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

...

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

...

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

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

...

*Home occupation:* An occupation conducted in a dwelling unit or accessory building that is incidental and subordinate to its use for residential purposes by its occupants, and causes no change in the exterior of the dwelling. ~~See chapter 5.~~

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

...

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

...

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

...

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

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

...

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

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

...

~~**Manufactured housing:** Factory-built, single-family structures that meet the National Manufactured Home Construction and Safety Standards Act (42 USC Sec. 5401), commonly known as the HUD (U.S. Department of Housing and Urban Development) code.~~

...

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

...

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

...

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

...

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

...

~~**Owner:** The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. “Owner” shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property.~~

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

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

...

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

...

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

...

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

...

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

***Special use permit:* A ~~type of conditional use~~ permit ~~that is~~ issued by the ~~zoning~~ board of adjustment which involves a master-planned use of property for the development or redevelopment of new multiple dwelling or multiple commercial units, and other types of land uses in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. ~~these regulations to authorize a specific use of land as required by these regulations.~~**

...

***Subdivider:* Any person, ~~firm, or corporation~~ who subdivides or develops any land deemed to be a subdivision as herein defined.**

...

***Subdivision, exempt:* The types of land divisions or combinations that are exempt from state and local subdivision ~~definitions~~ **regulations** (per ~~G.S. 160A-376, or any successor statute~~) and ~~enumerated in of the land use code. N.C.G.S. § 160D-802.~~**

***Subdivision, major:* A subdivision ~~which meets the specifications set forth in the definition of, other than an exempt~~ subdivision ~~and is not exempted from that definition (see chapter 3),~~ and which requires the extension of public right-of-way and/or public streets, or where the entire tract to be subdivided is greater than five acres, or where the subdivision will result in five or more lots after the subdivision is complete.**

***Subdivision, minor:* A subdivision ~~which meets the specifications set forth in the definition of, other than an exempt~~ subdivision ~~and is not exempted from that definition and,~~ which involves no new public streets or roads, and where the entire tract to be subdivided is five acres or less in size, and where four or fewer lots will result after the subdivision is complete.**

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

...

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

**Tenant:** Any person who ~~alone, jointly or severally with others~~ occupies a dwelling unit under a verbal or written lease or holds a legal tenancy in a dwelling.

...

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

**Section 7. Section 1.3.1 of Chapter 1 of the Land Use Code is hereby amended as follows:**

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~~ **this** code but which existed before the effective date of this chapter as a legal "pre-existing **non**conformance" and which remains nonconforming, and any use, structure, or lot which has become nonconforming as a result of the adoption of ~~the Land Use~~ **this** code . . .

B. This section shall not apply to any feature which is the subject of a variance from particular **development** regulations that has been granted by the ~~zoning~~ board of adjustment ~~subsequent to the adoption of this Code~~. . . .

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

~~1. Changed to another nonconforming use;~~

~~2.1.~~ Enlarged or extended except in conformity with this chapter;

~~3.2.~~ Reestablished after a discontinuance of 180 days; **or**

~~4.3.~~ Extended beyond **the** adopted amortization period if applicable ~~(as with the sign ordinance).~~  
~~(, § 1, 9-9-2019).~~

**Section 8. Section 1.3.2 of Chapter 1 of the Land Use Code is hereby amended as follows:**

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

A single-family dwelling unit, or **a** replacement manufactured home meeting the criteria set forth in ~~manufactured housing regulations (chapter~~ **Section 5).** **14**, shall be . . .

B. Variance of any district regulations other than lot size requirements ~~shall be~~ **is** obtained ~~through~~ **from** the ~~action of the zoning~~ board of adjustment.

C. A replacement, nonconforming manufactured home may be placed within 180 days after the previous home is removed and shall conform to the setback standards of the district in which it is located **if possible**, and, ~~when this in the event it~~ is not possible **to conform to the setback standards of the district**, the replacement manufactured home shall not increase the nonconformity of the **current** setback ~~of the district~~ requirements and shall be placed to achieve the maximum ~~amount of~~ setback ~~required under the ordinance as~~ possible.

**Section 9. Section 1.3.3 of Chapter 1 of the Land Use Code is hereby amended as follows:**

1.3.3 - Nonconforming structures occupying conforming lots.

...

C. Any ~~milt-family~~ **multi-family** dwellings . . .

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.

...

**Section 10. Section 1.3.4 of Chapter 1 of the Land Use Code is hereby amended as follows:**

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 . . .

~~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.~~

~~2. 3.~~ A nonconforming use . . .

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 special use** within the district in which it is located.

**Section 11. Subsections 1.3.5(B) and (C) of Chapter 1 of the Land Use Code are hereby amended as follows:**

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 may not** take advantage of the provisions of this section without combining these adjoining lots.

C. A lot ~~hat~~ **that** is only . . .

**Section 12. Subsections 1.3.6(C) and (D) of Chapter 1 of the Land Use Code are hereby amended as follows:**

C. Any nonconforming building . . . :

...

3. Within 180 ~~successive~~ days of ~~thea~~ fire; . . . ;

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-~~ususe~~ **to be** in conformity with the provisions of this chapter.

**Section 13. Section 1.4 of Chapter 1 of the Land Use Code is hereby amended as follows:**

**SECTION 1.4 - ADMINISTRATION AND PROCEDURES**

1.4.1 - Town staff.

A. The provisions of the land use code shall be administered . . . , and as provided by the **N.C.G.S. ch. 160AD**. This may include, but **will** not be limited to, the following assignments:

1. A zoning administrator is assigned the duty and authority to administer and enforce the zoning and general provisions of ~~the land use~~ **these development** regulations.

...

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

### **C. Conflicts of interest.**

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

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

#### 1.4.2 - Boards and commissions.

A. In accordance with ~~title~~ **chapter 2, article III** of the Town of Black Mountain Code of Ordinances . . .

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

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

1. The town ~~board of aldermen~~ **council** is the elected, governing body of the town and shall:

a. ~~Adopt text for and amendments to~~ **Amend** this ~~chapter~~ **code** and adopt a statement describing how its action is consistent with the comprehensive plan **and**/or other adopted plans;

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

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

~~d. Approve final plats for major and minor subdivisions;~~

~~d.e.~~ Accept or close platted or granted rights-of-ways; and

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

2. The town *planning board* . . . shall:

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

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

...

~~g. Advise on planning initiatives that promote housing affordability and diversity;~~



- ~~h. Research and pursue grants and resources, including partnerships with housing and community development agencies to facilitate development and redevelopment of property to meet community housing needs; and~~
- ~~i. Maintain data on housing information and educate the public on affordability issues.~~

3. The *town board of adjustment* . . . shall have the authority to:

- a. Hear and decide appeals of staff interpretations of ordinances;
- b. Consider and grant variances; ~~and~~
- c. Consider and issue ~~conditional and~~ special use permits;
- d. Hear and decide appeals where it is alleged that there is error in any order, decision, interpretation or determination made by zoning officials;
- e. ~~Have the authority to~~ Vary or modify any of the regulations or provisions of ~~this ordinance~~ **the development regulations** so that the spirit of the ~~ordinance~~ **development regulations** is observed, public safety and welfare secured, and substantial justice is done. No change in permitted uses may be authorized by variance;
- f. Impose appropriate conditions that are reasonably related to ~~the~~ a special ~~or conditional~~ use application or to a variance request;

. . .

~~D. Advisory committees.~~

- ~~1. From time to time the board of aldermen may appoint one or more individuals to help carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the aldermen may appoint advisory committees to consider the thoroughfare plan, pedestrian plan, stormwater management plan or other issues.~~
- ~~2. Nothing in this section shall prevent the board of aldermen from establishing independent advisory groups, committees, or commissions to make recommendations on any issue directly to the board of aldermen.~~

1.4.3 - Board and commission member conduct and conflict of interest.

~~A. Each board and commission purpose, authority and general procedures are provided in the town's manual of boards and commissions and as described in title III of the Town Code of Ordinances. Boards and commissions may also adopt rules and procedures for their conducting business.~~

~~B.A. No member . . .~~

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

**C. Members of appointed boards exercising quasi-judicial functions shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. For**



**purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.**

...

#### 1.4.5 - Procedures for development applications.

The general provisions of this section apply to all development applications and procedures under ~~this ordinance, unless otherwise stated. (See chapter 2 for building permits; chapter 3 for subdivisions; chapter 4 for zoning regulations; chapter 5 for specified uses; chapter 6 for conditional use permits; and for special use permits).~~ **these development regulations, unless otherwise stated.**

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

B. Authority to file applications. . . .

1. Applicant is not the owner. If ~~the~~ applicant is not the owner . . .

2. Applicant is not the sole owner. If ~~the~~ applicant is not the sole owner . . .

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

**D. Completeness. The burden of presenting a complete application to the planning department or to the permit issuing board shall be upon the applicant. Applications will not be acted upon until such time as the application is complete. An application shall be deemed complete if it is submitted in the required form, includes all requested information, and is accompanied by the applicable fee. A determination of application completeness shall be made within five (5) working days of application filing. If an application is determined to be incomplete, the planning director shall provide written notice to the applicant along with the explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected. If the deficiencies are not corrected by the applicant within twenty (20) working days, the application shall be considered withdrawn.**

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

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

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

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

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

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

**1.4.6 - ~~Applications and technical review.~~ Technical review required.**

...

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

1. Work impacting the exterior of any structure within **the** historic ~~or conservation~~ districts;
2. Major and minor subdivisions;
3. Special use ~~applications;~~ **permits;**

~~4. Conditional use applications;~~

~~5.4.~~ Any work within a flood hazard area as indicated on the FIRM maps;

~~6.5.~~ Projects within the ICD, OI-6 or ~~C-3CB~~ districts; or

~~7.6.~~ Projects adjacent to US Highway 70 within the US70 overlay district.

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

1. The name and address of the ~~developer;~~ **owner;**

~~2. The proposed name and location of the subdivision;~~

~~3.2.~~ **The approximate** Total acreage of the ~~proposed subdivision;~~ **subject parcel;**

~~4.3.~~ **The tentative-proposed site layout, including** street and lot arrangement, ~~including~~ designation of driveways, parking lots, open space, greenways, and stormwater management areas;

~~5.4.~~ Topographic lines and drainages; and

~~6.5.~~ Other information believed necessary to obtain the opinion of the planning department staff as to the proposed ~~subdivision's~~ **project's** compliance with the requirements of this ~~ordinance code.~~

D. The planning director, zoning administrator, building inspector ~~or other staff as appointed or invited by the planning director,~~ **and fire marshal** shall meet with the property owner or developer as soon as conveniently possible to review the sketch plan and to provide technical comments. **Other staff or agencies may be invited by the planning director.** ...

~~E. The burden of presenting a complete application to the planning department or to the permit issuing board shall be upon the applicant.~~

~~F. Applications will not be forwarded on to a board or commission for consideration until such time as the application is complete and any required fees have been paid.~~

~~H. The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this code remains at all times on the applicant.~~

**1.4.7 - Timing of submittals.**

Any application, sketch plan, master plan, or plat that must go before the planning board, historic preservation commission ~~or,~~ board of ~~aldermen~~ **adjustment, or town council** must be submitted at least 14 days prior to the regularly scheduled meeting in order to be placed on that meeting's agenda. ~~The zoning board of adjustment, which does not have regularly scheduled meetings, will schedule hearings in response to applications in such a way as to meet all NCGS public notification requirements, usually within two to four weeks after a complete submittal is provided to the planning and development services department.~~

1.4.8 - Administrative and permit fees.

The ~~board of aldermen~~ **town council** may adopt a schedule of fees for permits and processing costs associated with the administration of ~~the land use code (see appendix)~~ **these development regulations**.

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

B. *Refund of fees.* Application fees are not refundable except where the planning director determines that an application was accepted in error, or **in the event the** fee paid exceeded the amount due, ~~in which case the amount of the overpayment will be refunded to the applicant, or if a project qualified for a rebate under the town's building regulations.~~

~~1.4.8 - Uses of right.~~

~~Uses or categories of uses not designated as permitted by right or as conditional or special uses, shall be prohibited. Conditional and special uses are permitted upon compliance with additional regulations as set out in the town's ordinances and under any such additional conditions as specified by the board of adjustment.~~

~~1.4.9 - Special use and conditional use permits.~~

~~Special use permits and conditional use permits are required for certain uses designated within the code in order to ensure the goals of the comprehensive plan or other adopted plans are considered and to minimize negative impacts on neighboring properties. These permits must be issued by the zoning board of adjustment which shall hear requests for all conditional and special use permits and consider permits in accordance with guidelines set forth.~~

**Section 14. Section 1.5 of Chapter 1 of the Land Use Code is hereby amended as follows:**

**SECTION 1.5 -- AMENDMENTS TO LAND USE REGULATIONS AND ZONING MAP**

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

A. These ~~land use~~ **development** regulations . . .

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

~~1. For formal applications for a zoning map or text amendment submitted with all accompanying documentation and fees, the planning board shall have 30 days within which to submit its report. If the planning board fails to submit a report within the required 30-day period, it shall be deemed to have approved the proposed amendment and the application shall be advanced to the board of aldermen.~~

~~2. For informal requests or suggestions for zoning map or text amendments, the planning board does not have to respond within 30 days but shall take the matter into advisement in their deliberations and determine how and at what time the recommendation or request shall be handled.~~

1.5.2 - Requirements for consideration of zoning map and text amendments.

~~B. After the required review and report by the planning board, the board of aldermen may undertake the necessary steps to amend the land use code.~~

**1.5.3 - Reconsideration of zoning map amendments.**

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

#### 1.5.4 - Procedure for map or text amendments.

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

B. *Citizen petitions for amendments.* Any citizen of Black Mountain may ~~be made request an amendment to the text of this code or the official zoning map~~ by submitting an application ~~form obtained from~~ to the planning department. Completed forms, ~~plus together with~~ any additional information the applicant feels to be pertinent, shall be filed with the planning department ~~for staff to forward on to the planning board.~~ The property owner or the holder of a conditional sales contract may request an amendment to the ~~land-use codedevelopment regulations~~ for a particular piece of property.

...

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

F. *Notice of planning board meeting to consider proposed map amendment.* ~~Proposed text and/or map changes shall be submitted to the planning board for review and recommendation. Before~~ When a zoning map amendment is ~~presented to the planning boardproposed~~, staff shall prominently post a notice of the public ~~hearearing~~ on the site of the proposed rezoning or on an adjacent public street or highway right-of-way ~~at least 10 but not more than 25 days prior to the date of the hearing.~~ When multiple parcels are included within a proposed zoning amendment, a posting on each individual parcel is not required but the town shall post enough notices in strategically visible locations so as to provide reasonable notice to interested persons. Additionally, the town shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed amendment and the date of the public ~~hearing meeting~~. If the zoning map amendment affects more than 50 properties, owned by ~~a total of~~ at least 50 different property owners, ~~the board of aldermenstaff~~ may publish a notice of the hearing, provided that each advertisement shall not be less than one-half of a newspaper page in size as long as the property owners residing outside the newspaper circulation are still notified by mail. ~~The planning board shall have 30 days within which to submit a recommendation to the board of aldermen with a statement of whether the proposed amendment is consistent with the comprehensive plan or otherofficially adopted plan applicable. If the planning board fails to act within the required 30-day period, it shall be deemed to support and recommend the proposed amendment and the application shall proceed to the board of aldermen.~~

~~G. The planning board makes a recommendation to the board of aldermen in writing that addresses plan consistency and other matters as deemed appropriate by the planning board. However,~~

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

H. *Public hearing required.* Before enacting an amendment to ~~this codedevelopment regulations~~ or official zoning map, the ~~aldermencouncil~~ shall first hold a public hearing. ~~Staff shall place~~

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

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

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

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

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

~~K.J. Written statement of consistency. Per G.S. 160A-383N.C.G.S. § 160D-605, in adopting or rejecting any zoning amendment, the governing board town council shall also adopt a brief statement describing whether its action is consistent with all applicable officially adopted plans and explaining why the board of aldermen consider the action taken to be reasonable and in the public interest or inconsistent with an adopted comprehensive plan.~~

~~J.K. Changes in the zoning map. . . .~~

**Section 15.** Section 1.6 of Chapter 1 of the Land Use Code is hereby amended as follows:

SECTION 1.6 - CERTIFICATE OF COMPLIANCE AND OCCUPANCY REQUIRED

1.6.1 - Certificate of compliance and occupancy required.

A. No building shall be used or occupied, or re-used or reoccupied, for commercial, institutional or industrial purposes, and no new residential construction shall be occupied until a certificate of compliance and occupancy, or "C.O." is obtained from the ~~office of the~~ building inspector or his/her designee, stating that the building, any building and/or site improvements, or the proposed use ~~complies~~ with the provisions of ~~this ordinance these development regulations.~~ . . .



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

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

D. The fire ~~code official~~ **marshal** and . . .

**Section 16. Subsections 1.7.4, “Decisions of the zoning board of adjustment,” 1.7.5, “Appeals from decisions of the zoning board of adjustment,” and 1.7.6 “Reserved” are deleted in their entirety and the remaining portions of Section 1.7 of Chapter 1 of the Land Use Code are hereby amended as follows:**

#### SECTION 1.7 - APPEALS AND VARIANCES

##### 1.7.1 - General procedures.

A. Any persons or interested parties wishing to seek a variance shall file an ~~appeal~~ **application** . . .

D. Upon receipt . . . :

1. The ~~zoning~~ board of adjustment shall hold ~~a public~~ **an evidentiary** hearing . . .

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

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

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

. . .

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

##### 1.7.2 - Appeals of administrative decisions.

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

1. ~~Any person who has standing under G.S. 160A-393(d) or the town may appeal a decision to the board of adjustment.~~ An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal.

2. ~~An appeal of an administrative~~ ~~The official who made the~~ decision shall give written notice to the ~~must be made within 30 days from receipt of the written notice of the~~ administrative decision, which written notice shall be delivered to the person seeking the determination and the owner of the property that is the subject of the ~~decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by certified mail, return receipt requested, personal delivery, electronic mail, or by first-class mail.~~

3. ~~The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal determination.~~ Any other person ~~with who has~~ standing ~~to under N.C.G.S. § 160D-1402(c) or the town may~~ appeal ~~shall a decision to the board of adjustment within 30 days from any source receipt of actual or constructive notice of the decision within which to file an appeal determination.~~ In the absence of evidence to the contrary, notice given pursuant to N.C.G.S. § 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

~~4-3.~~ It shall . . .

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

. . .

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

. . .

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



9. When hearing an appeal pursuant to **N.C.G.S. ~~160A-400.9~~ § 160D-9047**(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in **N.C.G.S. ~~160A-393~~ § 160D-1402**(k).

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

### **1.7.3 - Variances.**

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

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

...

~~B.C.~~ The existence of a nonconforming use . . .

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

...

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

4. Permit the creation of a nonconforming lot.

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

~~D.E.~~ A variance may be granted . . . :

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

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

...

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

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

**Section 17. Section 1.8 of Chapter 1 of the Land Use Code is hereby deleted and replaced with the following new section entitled “Certificates of Appropriateness”:**

**SECTION 1.8 - CERTIFICATES OF APPROPRIATENESS**

**1.8.1 - Application for certificate of appropriateness.**

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

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

**1.8.2 - Major and minor works.**

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

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

**1.8.3 - Criteria to determine appropriateness.**

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

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

1. Lot coverage, defined as the percentage of the lot area covered by primary structures.
2. Setback, defined as the distance from the lot lines to the building.
3. Building height.
4. Spacing of buildings, defined as the distance between adjacent buildings.
5. Proportion, shape, positioning, locating, pattern, sizes and style of all elements of fenestration and entry doors.
6. Surface materials and textures.
7. Roof shapes, forms and materials

8. Use of regional or local architectural traditions.
9. General form and proportion of buildings and structures; and the relationship of additions to the main structure.
10. Expression of architectural detailing.
11. Orientation of the building to the street.
12. Scale, determined by the size of the units of construction and architectural details in relation to the human scale, and also by the relationship of the building mass to adjoining open space and nearby buildings and structures; maintenance of pedestrian scale.
13. Proportion of width to height of the total building facade.
14. Archaeological sites and resources associated with standing structures.
15. Effect of trees and other landscape elements.
16. Major landscaping which would impact known archaeological sites.
17. Style, material, size and location of all outdoor advertising signs.
18. Appurtenant features and fixtures, such as lighting.
19. Structural condition and soundness.
20. Walls—Physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape masses or combinations of these.
21. Ground cover or paving.
22. Significant landscape, archaeological and natural features.

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

#### 1.8.4 - Demolition.

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

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

C. An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site or structure determined by the state historic preservation officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except

where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

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

#### 1.8.5 - Hearing procedures.

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

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

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

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

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

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

1. Approve the application for a certificate of appropriateness as proposed;
2. Approve the application for a certificate of appropriateness subject to specific conditions and/or modifications of the proposal presented in the application for a certificate of appropriateness;
3. Disapprove the application for a certificate of appropriateness as proposed or modified.

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

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

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

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

#### 1.8.6 - Certificate issuance; expiration; enforcement.

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

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

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

C. Compliance with certificates of appropriateness shall be enforced by the planning director or his or her designee. Failure to comply with a certificate of appropriateness shall be a violation of the development regulations and is punishable according to established procedures and penalties for such violations. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other regulations or laws.

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

#### 1.8.7 - Conditions for certain approvals.

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

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

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

### **Section 18. Chapter 1 of the Land Use Code is amended to add a new Section numbered 1.9 entitled “Vested Rights and Permit Choice” which reads as follows:**

#### **SECTION 1.9. - VESTED RIGHTS AND PERMIT CHOICE.**

1.9.1 – Generally.

A. A statutory vested right is established when:

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

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

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

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

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

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

1. For a site-specific vesting plan, as specified in section 1.8.2 below;
2. For a multi-phase development of at least twenty-five (25) acres, seven (7) years from the date the site plan for the initial phase of the development was approved by the planning board;
3. Specified in the approved development agreement;
4. For all other development permits or approvals, the date which is one (1) year from the date the permit was issued or approval was given, whichever is later;
5. For an incomplete development project in which development work is intentionally and voluntarily discontinued, the date which is two (2) years from the date work was last performed on the site.

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

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



H. Development permits or approvals, other than site-specific vesting plans, that would otherwise expire according to paragraph (F), may be extended for additional periods of one (1) year if the permit-issuing authority determines that:

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

#### 1.9.2 – Site-specific vesting plans

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

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

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

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

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

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

1. With the written consent of the affected landowner;
2. The town council, by ordinance issued after notice and a public hearing, determines that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan;
3. To the extent the landowner receives compensation for all costs, expenses, and other losses incurred, together with interest as provided in N.C.G.S. § 160D-106;
4. The town council, by ordinance issued after notice and a public hearing, determines that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the approval authority of the site-specific vesting plan; or
5. A state or federal law or regulation precludes development as contemplated, in which case the approval authority may modify the affected provisions upon a finding that the change in state or federal law has a fundamental effect on the plan.

F. A vested right for a site-specific vesting plan remains vested for a period of two years from the date the first development approval or permit is issued for the site. The period of vested rights may be extended by the approving authority for subsequent periods of one (1) year each up to a total of five (5) years.

#### 1.9.3 - Permit Choice

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

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

#### 1.9.4 - Vested rights relative to annexation.

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

1. Approval of a site-specific development plan may contain a variance from the proposed zoning district or other terms and conditions as may reasonably be necessary to protect the health, safety, and welfare of the citizens of the town and of the prospective residents or businesses of the proposed development.
2. A petition for annexation filed with the Town of Black Mountain under N.C.G.S. § 160A-31 or N.C.G.S. § 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under N.C.G.S. § 160D-108.
3. A statement that declares that no zoning vested right has been established under N.C.G.S. § 160D-108, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

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

### **Section 19. Section 1.9 of Chapter 1 of the Land Use Code entitled “Development Agreements” is renumbered as Section 1.10 and amended to read as follows:**

#### **SECTION 1.910 - DEVELOPMENT AGREEMENTS**

##### **~~1.9.1~~ 1.10.1 - Authority and purpose.**

A. ~~This ordinance of the land use code is adopted~~ Pursuant to the authority ~~contained in granted by N.C.G.S. 160A-400-22 § 160D-1001, et seq.,~~ which states **that** a local government may establish procedures and requirements to consider and enter into development agreements with developers for projects involving developable property of any size (including property that is subject to an executed brownfields agreement pursuant to ~~G.S.~~ Part 5 of Article 9 of Chapter 130A. ~~A development agreement must be approved by the town board of aldermen by the General Statutes), the Town of Black Mountain may, upon approval of an ordinance, by the town council, enter into development agreements as provided in this section.~~

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

~~C. This ordinance shall be effective throughout the town's planning jurisdiction which comprises the area within the corporate boundaries of the town as well as any area described in an adopted and/or amended ordinance by the town board of aldermen. Such planning jurisdiction may be modified from time to time in accordance with G.S. 160A-360 to 160A-365 and G.S. 160A-22 to 160A-58.28.~~

~~D.~~ **B.** The intent of development agreements is to . . .

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

~~1.9.2~~ **1.10.2** - Relationship to zoning, subdivision, and other ~~ordinances-regulations~~.

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

...

~~D. A situation that did not constitute a lawful~~**An unlawful**, nonconforming ~~situation under the zoning ordinance does use, structure, or lot shall~~ not ~~achieve be rendered a~~ lawful nonconforming ~~status use, structure, or lot~~ under this ordinance unless specified in the development agreement.

~~1.9.3~~ **1.10.3** - Procedure.

...

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

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

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

1. Applicable zoning designation . . .

~~C. E.~~ The ~~board of aldermen town council~~ shall review . . .

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

~~D. 1.~~ Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published not less than ten days **but** no more than 25 days before the date ~~fixed~~**scheduled** for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.

~~1. 2. Posting of property. When a development agreement is proposed,~~ Staff shall prominently post a notice of the public hearing on the site of the proposed development agreement or on an adjacent public street or highway right-of-way. Additionally, the town shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed development agreement and the date of the public hearing. ~~Notice shall also be posted on the town website indicating the date and time of the hearing. The mailed notice must include the location of the property, the development uses proposed on the site and a place where a copy of the development agreement can be obtained.~~

**3. Notice shall also be posted on the town website indicating the date and time of the hearing.**

~~E. G.~~ The ~~board of aldermen town council~~ shall . . .

~~F. H.~~ Development agreements shall be . . .

~~1.9.4~~ **1.10.4** - No use of land or buildings except in conformity with development agreement provisions.

A. No person may use, or occupy any land or buildings . . .

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

~~1.9.5~~ **1.10.5** - Adopted permit fees shall apply.

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

**Section 20. Section 1.10 of Chapter 1 of the Land Use Code entitled “Enforcement and Penalties” is renumbered as Section 1.11 and amended to read as follows:**

#### SECTION 1.~~10~~**11** - ENFORCEMENT AND PENALTIES

~~1.10.1~~ **1.11.1** - Authority and purpose.

A. ~~The provisions of this land use code~~**These development regulations** shall be enforced by the town ~~board of aldermen~~**council** and ~~the planning and development administrative~~ staff through their authority to abate ~~any~~ violations, **and to** enjoin, restrain, and prosecute any person violating ~~this ordinance~~**these development regulations** pursuant to North Carolina law.

B. ~~The purpose of~~ This section ~~is to establish~~**establishes** the procedures by which the town seeks corrections of violations of ~~this ordinance~~**these development regulations**. It also sets forth the remedies and penalties that apply to violations of ~~this ordinance~~**these development regulations**. The provisions of this ~~article~~**section** are intended to encourage the voluntary correction of violations, ~~where possible~~.

~~1.10.2~~ **1.11.2** - Unlawful to violate ~~this ordinance~~**development regulations**.

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

~~1.10.3~~ **1.11.3** - Responsible party.

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

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

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

**C. The holder of a development approval.**

~~1.10.4~~ **1.11.4** - Complaints, investigations, and inspections.

A. Whenever a violation of ~~this ordinance~~**these development regulations** occurs . . .

~~B. The town planning and development department staff as assigned must provide documentation of complaint investigations and may issue a notice of violation as a result of an investigation.~~

~~C. B.~~ Under the powers of this article, the enforcement officers . . . , shall have the authority to enter onto land within the town's jurisdiction to inspect for violations of ~~this code~~ **these development regulations** or to investigate complaints.

~~1.10.5~~ **1.11.5** - Warning of violation.

On determining that a violation exists, the planning and development department staff ~~shall provide the person alleged to be violating this code may issue~~ a written warning, ~~unless the act in violation of the code creates an imminent risk of harm to persons or property. The written warning shall~~ **which shall** include a description of the violation, ~~state and~~ the actions necessary to correct the violation, and invite the ~~alleged violator~~ **person responsible for the violation** to meet with the ~~planning director, building inspector or zoning administrator~~ **enforcement official** to discuss the violation and how it may be corrected. ~~The planning director may provide the alleged violator additional written warnings of the violation. The warning shall be delivered by personal delivery, electronic delivery, or first-class mail to the responsible party. If the violation creates an imminent risk of harm to persons or property, the enforcement official shall not provide a warning, and shall proceed immediately to issue a notice of violation as set out in Section 1.11.6.~~

~~1.10.6~~ **1.11.6** - Notices of violations and right to appeal.

~~A. The person or persons responsible for such violation shall be notified in writing in the form of a citation indicating the nature of the violation and the action necessary to correct it. When work or activity has been undertaken in violation of State law, this code or the terms of a development approval, a written notice of violation may be issued by the responsible enforcement official. The citation~~ **The notice of violation** shall be ~~served upon the offending party or responsible property owner property owner or party in interest personally or by certified or by certified mail, return receipt requested.~~ **delivered by personal delivery, electronic delivery, or first-class mail to all responsible parties. The notice of violation may be posted on the property.**

**B. The notice of violation shall include a description of the violation and the actions necessary to correct**

~~B. Remedial action shall be the violation and shall require such remedial action be~~ taken within a prescribed time period, ~~but~~ not to exceed 90 . . .

C. Enforcement officers ~~s~~ may waive penalties . . .

~~D. Any person who is served a notice of~~ **If the violation and correction order at issue is a violation of the State Building Code, the property owner or party responsible for the violation may appeal that determination** the issuance of the citation to the Commissioner of Insurance pursuant to N.C.G.S. § 160D-1127.

**E. For all other violations, the property owner or party responsible for the violation may appeal the issuance of the citation** to the board of adjustment within 30 days of the date of the receipt of the written ~~notice of violation and correction order~~ **citation** by filing an appeal application with the town clerk. ~~If a person who receives a notice of violation and correction order does not appeal the determination within the time established in this section, then that person may not later appeal to the board of adjustment the subsequent imposition of any remedy or penalty provided in this article.~~

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

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

~~A. The violation notice shall order discontinuance of uses of land or buildings in~~

~~violation of this chapter; removal of illegal buildings or structures; discontinuance of illegal work being done to insure compliance with, or to prevent, continued violation of its provisions.~~

~~B. A.~~ Whenever land is disturbed or a building, structure or part thereof is being constructed, demolished, renovated, altered, or repaired in substantial violation of any applicable provision of ~~the land use code~~**these development regulations**, the planning director, zoning administrator, fire or building inspector or other enforcement ~~agent of the town~~**official** may order the specific part of the work that is in violation, or would be when the work is completed, to be immediately stopped ~~upon investigation or inspection.~~

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

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

~~2. 3.~~ The enforcement officer may revoke ~~and require the return of~~ any **development** permit ~~(e.g., Building certificate of occupancy)~~ by written notification to the permit holder when violations of ~~this ordinance~~**these development regulations** have occurred. Permits may be revoked when false statements or misrepresentations were made in securing the permit, work is being or has been done in substantial departure from the approved application or plan, there has been a failure to comply with the requirements of ~~this ordinance~~**these development regulations**, or a permit has been mistakenly issued in violation of ~~this ordinance~~**these development regulations**.

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

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

~~C. D.~~ Failure to correct the violation, ~~file an appeal within 30 days, except when the ordinances provide for a shorter appeal period, of any determination under this section~~**appeal**, or ~~to contact the planning department with a request for an extension and a plan of time~~ for correcting the violation, shall constitute a waiver of any objection to said determination and of the right to an administrative hearing and adjudication, and the order shall therefore be final and binding.

~~D. In the event that any violation is not cured within the period specified pursuant to the stop work order, a hearing may be set by the planning director or building inspector, depending on the nature of the violation, or the town may pursue civil penalties.~~

#### ~~1.10.8~~ **1.11.8** - Court injunctions or order of abatement.

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

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

...



4. Other actions necessary to bring the property into compliance with ~~this code~~ **these development regulations**.

C. *Execution of court decisions.* If the responsible party fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he or she may be cited for contempt ~~and~~ the town may execute the order of abatement ~~and place~~. **The town shall have** a lien on the property for the cost of executing the order **in the nature of a mechanic's and materialman's lien**. . . .

~~4.10.9~~ **1.11.9** - Permit revocation, disapproval of subsequent permits and repeat violations.

A. *Permit revocation.* If a person fails to comply with the terms ~~and conditions~~ of a permit or development approval ~~granted under this ordinance~~, the ~~planning and development department staff~~ **responsible enforcement official** may revoke the permit or development approval.

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

. . .

~~4.10.10~~ **1.11.10** - Civil penalties.

A. Pursuant to **N.C.G.S. § 160A-175**, the town may impose civil penalties in the form of fines for violation of its ~~ordinances~~ **development regulations**. Subsequent citations for the same violation may be issued by the ~~building inspector or zoning administrator or other~~ enforcement ~~agent~~ **official** if the offender does not pay the citation (except as otherwise provided in a warning citation) after it has been issued, unless ~~the offender has sought an appeal to the actions of the staff through the board of adjustment~~ **citation is pending**.

. . .

**Section 21.** Section 2.1.1 of Chapter 2 of the Land Use Code is hereby amended to read as follows:

2.1.1 - Building codes adopted.

A. The North Carolina State Building Code is the basis for all building inspections as authorized in N.C. G.S. ~~160A-417, including those conducted within the city.~~ **106D-1104**. The code includes: ~~Volume I, General Construction; North Carolina Building Code, Volume I-B, One and Two Family North Carolina Residential Building Code; Volume I-C, Accessibility Code; Volume I-D, Regulations for Manufactured Homes; Volume II, Plumbing Code; Volume III, Mechanical Code; Volume IV, Fuel Gas Code; Volume V, North Carolina Energy Conservation Code; Volume VI, North Carolina Mechanical Code, North Carolina Plumbing Code, North Carolina Fuel Gas Code, North Carolina Administrative and Enforcement; Volume VII, National Electrical Code~~ **Codes and Policies, Regulations for Manufactured Homes**; and all subsequent editions and amendments. The code is hereby adopted by reference as fully as though set forth in this section, to include any and all future amendments thereto that may, from time to time, be adopted and approved by the state.

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

1. Appendix ~~FAF~~ **F**: Radon Control Methods

1. ~~Appendix G: Swimming Pools, Spas, and Hot Tubs~~

2. ~~Appendix M: Wood Decks~~

3. ~~Appendix O: Construction Practice for Slab on Grade~~



**Section 22.** Section 2.1.2 of Chapter 2 of the Land Use Code is hereby amended to read as follows:

2.1.2. - Plumbing code addition.

*Water line leak prevention and shut-off valves.* ~~In order~~ To minimize leaks and conserve water, the Town of Black Mountain requires a test of 100 pounds of pressure on all water supply piping to structures in new construction, and ~~if existing on replacement~~ water lines ~~are being replaced in existing structures~~. A shut-off valve shall be required between the town meter and the structure it is serving that is externally accessible in order to isolate or shut-off all water to the structure without accessing the town meter per ~~Chapter V, Section 52.26 of the Town Public Works Regulations [section] 48-163~~. The shut-off valve shall be located within three feet of the town's meter. ~~This allows temporary shut-off of water to address leaks for seasonal rental properties or if the structure is to remain unoccupied for an extended period.~~

**Section 23.** Section 2.1.4 of Chapter 2 of the Land Use Code, entitled "Town zoning authorization and building permit required" is hereby amended and Section 2.1.5 is renumbered as subparagraph (C) of Section 2.1.4, with the entire section to read as follows:

~~2.1.4 Town zoning authorization and building permit required.~~

**2.1.4 - Permits.**

~~A. Permit required before work is begun. Failure to obtain a written permit prior to beginning of construction shall be a misdemeanor as provided in N.C.G.S. 160A-417(f) and constitute a violation of this article and subject the offender to a civil penalty of \$50.00 per day, with each day after the beginning of work being a separate violation. A stop order will be issued and remain in effect until the work done is removed or a permit is properly applied for and approved. Penalties may be waived in cases of emergency repairs or hardship as determined by the building inspector. Questions concerning whether or not specific work or jobs need a permit should be directed to the town building inspector's office.~~

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

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

1. the ~~town~~ zoning administrator has ~~provided his or her authorization~~ **certified** that the proposed structure ~~or~~ **and** use is compliant with the zoning district in which it is located. ~~The town fire prevention inspector must provide his or her authorization;~~
2. the ~~planning director or subdivision administrator~~ **has certified** that the project is compliant with the ~~town terms or conditions of any existing development approval;~~
3. the fire marshal has certified that the project is compliant with the fire ~~district code;~~
4. The stormwater administrator has certified that the project is compliant with the stormwater ordinance-; and
5. The ~~permit must also be reviewed and approved by the storm water and floodplain administrator-~~ **has certified that the project is compliant with the flood damage prevention ordinance.**

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

be issued until the subdivision plat is approved. ~~Building permits for existing lots shall be issued if the~~

~~D. False statements. False statements on any application for a permit shall be grounds for immediate revocation or denial of such license or permit.~~

~~2.1.5-C.~~ *Application for a building permit.* ~~Applications for~~ **No** building permits shall ~~include~~ **be issued until a complete permit application has been submitted to the building inspector.** The building inspector **shall make available a list of information which must be submitted with the application.** ~~site plan or plot plan drawn scale showing:~~

- ~~1. The actual dimensions and shape of the lot to be built upon.~~
- ~~2. Exact sizes, location, and dimensions of the proposed building or alteration.~~
- ~~3. Location of the lot with respect to adjacent rights-of-way.~~
- ~~4. Location and dimensions of off-street parking and ingress and egress to such space.~~
- ~~B. Approval and proof of payment of required MSD service application or facilities fee (whichever is applicable as determined by MSD) or approval from Buncombe County Health Department for septic installation.~~
- ~~C. Proof of the availability of potable water to project and evidence that any required easements or encroachment permits have been obtained.~~
- ~~D. The application shall include all the information required by the most current version of the North Carolina Building Code.~~
- ~~E. Any additional information that may be applicable and lawfully required by the building inspector which at a minimum, includes the following:~~
  - ~~1. Two sets of plans.~~
  - ~~2. Premise number from energy utility.~~
  - ~~3. Stormwater control plan, if stormwater control measures are required.~~
  - ~~4. Residential stormwater solution worksheet, if stormwater control is required.~~
  - ~~5. Manual J calculations.~~
  - ~~6. Boundary line survey.~~
  - ~~7. Elevation certificate.~~
  - ~~8. Buncombe County Sediment and Erosion Control Permit, if required.~~
  - ~~9. Lien Agent Appointment.~~
  - ~~10. House numbers on the outside of the house, visible from the street (if a remodel).~~
  - ~~11. New mechanical systems are required to have a duct blast test.~~

**Section 24. Section 2.1.6 of Chapter 2 of the Land Use Code, entitled "Certificates of occupancy and compliance" is hereby deleted in its entirety. A new Section numbered 2.1.5, entitled "Certificates of occupancy and compliance" is hereby inserted in Chapter 2 of the Land Use Code, said new section to read as follows:**

**2.1.5 - Certificates of occupancy and compliance.**

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

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

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

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

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

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

**Section 25. Chapter 2 of the Land Use Code is further modified as follows:**

- a. Section 2.1.7 entitled “Reserved” is hereby renumbered as Section 2.1.6.\
- b. Section 2.1.8 entitled “Town building and zoning inspections” is hereby deleted in its entirety.
- c. Section 2.1.9 entitled “Time limitations on permits” is hereby deleted in its entirety.
- d. Section 2.1.10 entitled “Public right-of-way to be maintained” is hereby renumbered as Section 2.1.7.
- e. Section 2.1.11 of Chapter 2 of the Land Use Code, entitled “Building permit fees and available incentives” is hereby renumbered as Section 2.1.8 and amended as follows:

**2.1.11 2.1.8 - Building permit fees and available incentives.**

A. Permit fees are established by the ~~board of aldermen~~ **town council** and are published in a schedule of building permit and inspection fees available through the ~~building inspections office~~ **planning department**.

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

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

2. To encourage new home and rental development to be available at median to low-income market prices, the town will provide a ~~50 percent~~ **rebate from equal to 50% of** the calculated building permit fee for construction projects ~~that are~~ developed . . .

**Section 26. Section 2.1.12 of Chapter 2 of the Land Use Code, entitled “Unsafe residential buildings condemned” is hereby deleted in its entirety. A new Section numbered 2.1.9 entitled “Unsafe buildings condemned,” is added to Chapter 2 of the Land Use Code, which new section shall read as follows:**

**2.1.9 - Unsafe buildings condemned.**

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

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

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

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

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

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

1. That the building or structure is in a condition that appears to meet one or more of the following:
  - a. Constitutes a fire or safety hazard;
  - b. Is dangerous to life, health, or other property;
  - c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children; or
  - d. Has a tendency to attract persons intent on criminal activities or other activities that would constitute a public nuisance;
2. That an administrative hearing will be held before the inspector at a designated place and time not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
3. That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot, after due diligence, be discovered, the notice shall be considered properly and adequately served if a copy is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the Town of Black Mountain at least once not later than one week prior to the hearing.

G. If, after a hearing, the inspector shall find that the building or structure is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, the inspector shall issue an order in writing, directed to the owner of such building or structure, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or structure or taking other necessary steps within such period as the inspector may prescribe; provided, however that such period shall not be less than sixty days unless the inspector finds that there is imminent danger to life or other property.

H Any owner who has received such an order may appeal to the town council by giving notice of appeal in writing to the town clerk within 10 days following issuance of the order. The town council shall hear and render a decision in the appeal within a reasonable time. The council may affirm, modify and affirm, or revoke the order. In the absence of an appeal, the order of the inspector shall be final.

I. If the owner of a building or structure fails to comply with an order issued pursuant to N.C.G.S. §160D-1120 from which no appeal has been taken, or fails to comply with an order of the town council

following an appeal, the owner shall be guilty of a Class 1 misdemeanor. In lieu of civil or criminal penalties, the town council may authorize the initiation of appropriate actions or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.

**Section 27.** Section 2.1.13 of Chapter 2 of the Land Use Code, entitled “Maintenance standards for nonresidential structures” is hereby renumbered as Section 2.1.10, and subsections (B) thru (G) are hereby deleted, and subsection (A) is hereby amended as follows:

**~~2.1.13~~ 2.1.10** - Maintenance standards for nonresidential structures.

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

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

**Section 28.** Section 2.2 of Chapter 2 of the Land Use Code, entitled “Minimum Housing Code” is hereby amended as follows:

**2.2.1** - Purpose.

In accordance with ~~G.S. Ch. 160A, art. 18~~**Article 12 of Chapter 160D of the North Carolina General Statutes**, and the North Carolina Rental Agreement Act, ~~the purpose of this chapter of the code is adopted~~ to protect . . .

**2.2.2** - Applicability.

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

B. This ~~ordinance~~**Minimum Housing Code** applies only to renter occupied dwellings. Owner occupied dwellings in which a room or portion of the structure in which the owner resides is leased or rented, and owner-occupied manufactured homes on rented lots, such as a manufactured home park, are exempt from this ~~ordinance~~**Minimum Housing Code**.

#### 2.2.3 - Minimum documentation for dwellings and dwelling units.

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

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

...

5. A safety checklist as completed by the ~~town-building~~ inspector or other qualified building inspector issued within the previous three years.

...

~~D. No person shall rent any manufactured home that was built before June 15, 1976, unless they can provide documentation that the home has been renovated and complies with the Housing and Urban Development (HUD) Code for Manufactured Home Construction and Safety Standards.~~

#### 2.2.4 - Minimum standards of fitness for dwellings and dwelling units.

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

...

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

...

**v.** Stove piping placed and secured with:

- (a) Minimum 18-inch masonry surrounding thimble as clearance separation from combustible; or
- (b) Minimum nine-inch air separation for insulated listed stove piping; or

~~\*. Minimum one-inch air clearance surrounded by six-inch glass fiber insulation and ventilated assembly; or~~

...

#### 2.2.5 - Unsafe conditions.

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

1. No operating heating facilities that would maintain a minimum room temperature of 68 degrees at a point three feet ~~from~~**above** the floor in all habitable rooms- **with an outside temperature of 20 degrees Fahrenheit.**

...

#### 2.2.6 – Enforcement.



...

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

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

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

**C. Notice of violation.** If it appears to the ~~building~~ inspector that the dwelling or dwelling unit does not meet the minimum standards contained in this ~~ordinance~~code, the ~~building~~ inspector shall issue a written notice of violation **pursuant to the owner or other party provisions of interest, which notice may be served upon the owner or other party in interest by the building inspector and/or by an officer of the Black Mountain Police Department. The notice of violation shall identify the systems or components which are not in compliance with this ordinance and provide specific measures to be taken in order to bring the dwelling into compliance.** ~~Section 1.10.6. The owner shall, within 30 calendar days if the building is occupied or 90 calendar days if the building is unoccupied, make life safety or sanitary emergency repairs or perform such work as is necessary to bring the dwelling unit into compliance. within 30 calendar days if the building is occupied.~~ The building inspector may grant extensions of time for completion of the required measures, but shall not be obligated to do so.

**D. Waivers.**

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

**E. Appeals.** The property owner or other parties in interest may appeal the ~~de~~termination of the ~~building~~ inspector ~~finding a violation of the minimum housing code~~ to the ~~zoning board of adjustment within ten days of the notice of violation. Such appeal shall be heard by the zoning board of adjustment in the same manner~~accordance with section 1.7.2, provided ~~for other appeals to however~~ that board. ~~The town, owner, the notice of appeal must be filed within ten days from the rendering of the inspector's determination or other parties in interest may further appeal the findings of the zoning board of adjustment to the superior court for Buncombe County, North Carolina within 15 days after receipt~~service of the order ~~issued by the zoning board of adjustment. Such appeal proceedings shall be made in the nature certiorari said court shall review the findings of fact and order of the~~



~~zoning board of adjustment to determine whether there was evidence to support its findings and that its ruling was not arbitrary, whichever shall last occur. The board may reverse or capricious.~~

~~The property owner affirm, wholly or other parties in interest partly, or may appeal the modify the decision or order appealed from, and may make any decision of the building and order that in its opinion ought to be made in the matter, and, to that end, has all the powers of the inspector finding a violation of the building code to the commissioner of insurance within ten days of receipt of the notice of violation.~~

~~F. Violations, remedies and penalty. The owner of any dwelling or dwelling unit or other parties in interest, who fails to comply with an order of the building. The concurring vote of four members is required to reverse or modify the decision of the inspector or the zoning board of adjustment, shall be subject to penalties allowed under G.S. 160A-175. The board may also, when unnecessary hardships would result from carrying out the strict letter of this code, adapt the application of the code to the necessities of the case to the end that the spirit of the code is observed, public safety and welfare secured, and substantial justice done.~~

**Section 29. Section 2.3 of Chapter 2 of the Land Use Code, entitled “Flood Damage Prevention Ordinance” is hereby amended as follows:**

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

Section A. - Statutory authorization.

The ~~Legislature of the State of~~ North Carolina **General Assembly** has in G.S. ch. 143, ~~art. 21~~, pt. 6; G.S. ch. 160AD, art. ~~19, pts. 3, 5, 89, pt. 2, sect. 923~~; and G.S. ch. 160A, art. 8, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

~~Therefore, the Board of Aldermen of the Town of Black Mountain, North Carolina, does ordain as follows:~~

...

Article 2. - Definitions

...

*Accessory structure (appurtenant structure)* means a structure **detached from a principal building and** located on the same ~~parcel of property as the principal structure and the use of which is lot and incidental~~ **and subordinate** to the ~~use of the principal structure building or use~~. . . .

~~*Appeal* means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.~~

...

*Floodplain management regulations* means this ordinance and other zoning ~~ordinances regulations~~, subdivision regulations, building codes, health regulations, special purpose ~~ordinances regulations~~, and other applications of police power. . . .

*Functionally dependent facility* means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. **The term does not include long-term storage, manufacture, sales, or service facilities.** ~~The term does not include long-term storage, manufacture, sales, or service facilities.~~

...

*Remedy a violation* means to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the **ordinanceregulations** or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

...

~~Structure means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.~~

...

~~Variance is a grant of relief from the requirements of this ordinance.~~

...

#### Section E. - Variance procedures.

(1) The ~~zoning~~ board of adjustment ~~as established by the Town of Black Mountain, hereinafter referred to as the "appeal board",~~ shall hear and decide requests for variances from the requirements of this ordinance.

~~2. Before approving a variance request, the zoning board of adjustment shall first hold a public hearing. Staff shall prominently post a notice of the public hearing on the site of the variance request or on an adjacent street or highway right-of-way not less than ten days nor more than 25 days before the date fixed for the hearing. Additionally, the town shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the variance request and the date of the public hearing. Notice shall also be posted to the town website indicating the date and time of the hearing. Staff shall place notification of the public hearing pursuant to the process set forth in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published not less than ten days nor more than 25 days before the date fixed for the hearing. section 1.7 of this code. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include time and place of hearing.~~

(2)(3) Variances may be issued for:

...

(3)(4) In passing upon variances, the ~~appeal~~ board **of adjustment** shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

(4)(5) A written report addressing each of the above factors shall be submitted with the application for a variance.

(5)(6) Upon consideration of the factors listed above and the purposes of this ordinance, the ~~appeal~~ board **of adjustment** may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.

(6)(7) Any applicant to whom . . .

(7)(8) The floodplain administrator shall . . .

(8)(9) Conditions for variances: . . .

(9)(10) A variance may be issued . . .

...

#### Article 6. - Legal Status Provisions

...  
~~Section D.— Effective date.~~

~~This ordinance shall become effective January 6, 2010.~~

~~Section E.— Adoption certification.~~

~~I hereby certify that this is a true and correct copy of the flood damage prevention ordinance as adopted by the board of aldermen of the Town of Black Mountain, North Carolina, on the 9th day of November, 2009.~~

~~READ, APPROVED AND ADOPTED, by a vote of 5 to 0, on the 9<sup>th</sup> day of November, 2009.  
(Certifications in the Public Record).~~

**Section 30. Section 3.1(B) of Chapter 3 of the Land Use Code, is hereby amended as follows:**

B. The requirements ~~withinof~~ this chapter apply to all ~~types of~~ subdivisions ~~as enumerated herein.~~ As used in this ordinance, the definition of the word "subdivision" is defined in G.S. 160A-376, as now or hereafter amended. For purposes of this ordinance, "subdivision" means any division of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale or building development including any divisions of land involving the dedication of a new street or a change in existing streets; provided, that the following shall not be included within the definition or be subject to the regulations prescribed by this chapter:, **except:**

- ...
3. Public acquisition for transportation corridors such as purchase of land for roadway widening or the establishment of rights-of-ways.
  4. Single ownership tract division where **the** entire area . . .
  6. The division of land ~~jointly inherited for pursuant to~~ the ~~purposeterms~~ of ~~conveying a single lot~~ ~~probated will~~ or ~~parcel to each tenant in common, all~~ ~~accordance with intestate succession under Chapter 29 of whom inherited the land by intestacy or by will.~~ **North Carolina General Statutes.**

...

**10. Division of land for the purpose of habitat preservation, protection of ridge tops, surface waters, wetland or other natural features, for the protection of an archeological site, or for the purposes of creating a stormwater management facility, without meeting subdivision standards for lot size, access, or road frontage if the following conditions are met:**

- a. Maintenance responsibility is established with a recognized land trust, the town or other responsible entity;**
- b. The tract is placed in conservation in perpetuity; and**
- c. The town may retain access for the purpose of public safety protection.**

**Section 31. Section 3.2.2 of Chapter 3 of the Land Use Code, is hereby amended as follows:**

**3.2.2 - No subdivision without approval.**

A. No real property, including property declared under the NC Condominium Act (G.S. 47C-1 et seq.), lying within the town's jurisdiction shall be subdivided except in conformance with applicable provisions of this chapter. ~~Violations shall be subject to civil penalties.~~

~~E. The town reserves the right to inspect, reject, stop or otherwise cease the construction of all service facilities or improvements in the event the same are not being constructed in accordance with plans, specification standards, policies, or other requirements of the town set forth in this section.~~

**Section 31.** Sections 3.2.3 and 3.2.4 of Chapter 3 of the Land Use Code are deleted in their entirety.

**Section 32.** Section 3.3 of Chapter 3 of the Land Use Code, is hereby amended as follows:

~~For all subdivisions of land as defined in , the following categories of subdivisions shall be used to determine the procedures required for review:~~

**3.3.1 - Minor subdivision.**

A. A minor subdivision is defined as ~~a subdivision~~ **the division of a tract or parcel of land** where:

**1.** No new public streets or roads are proposed (except for private driveway easements with each driveway easement serving no more than three lots; ~~and~~);

**2.** ~~Where~~ **No part of the tract or parcel to be divided has been divided under this section in the previous ten years; and**

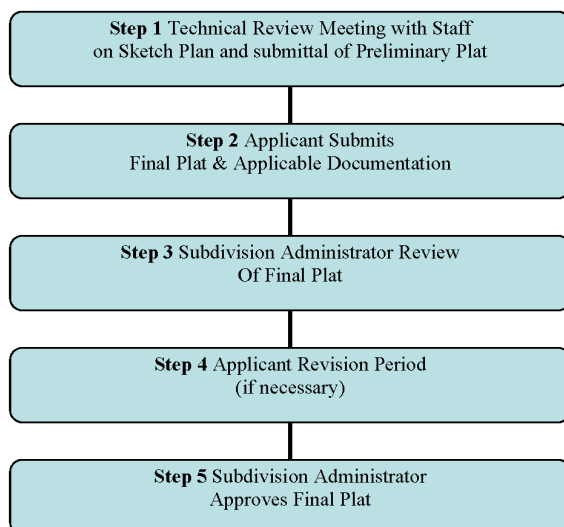
**3.** **No more than** four ~~or fewer~~ lots will result ~~after from~~ the ~~subdivision is complete~~ **division;**

**B. The resultant lots shall conform with all requirements of this Land Use Code.**

~~C.B.~~ The minor subdivision process shall be used only where the subdivision includes all contiguous land under the ownership of the applicant- **and where the resultant lots will not constitute a new phase of an existing development.**

~~D.C.~~ The applicant . . .

~~E.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~~ **preliminary plat** of the proposed development to the meeting that meets the requirements set forth in the land use code.

B. The subdivision administrator shall review ~~a sketch plan with the applicant~~ **preliminary plat** for ~~general compliance with requirements, the zoning and eligible uses, and other needs. The public works, 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.~~ **this land use code and shall inform the applicant of any deficiencies.** Additional information concerning the proposed subdivision may be required at the request of the ~~administering staff~~ **subdivision administrator.**

C. One copy of the preliminary plat shall be retained as a part of the record of the subdivision administrator with one copy being returned to the subdivider or his authorized agent along with comments made by the subdivision administrator concerning the plat as generated during the ~~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 ~~and based on consultation and sketch plan comments and any improvements made since the preliminary plat was filed~~ **section 3.4.**

Step 3. Review of final plat by subdivision administrator

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

Step 4. Applicant revision period (if necessary)

**If the proposed plat is not approved, the** ~~The~~ applicant ~~shall~~ **may** revise the plat in accordance with the comments provided by the subdivision administrator and ~~other applicable agencies.~~ **may resubmit the plat** ~~All necessary revisions shall be made prior to for approval by the subdivision administrator.~~

Step 5. Subdivision administrator approval of final plat

**A.** The subdivision administrator shall ~~decide approval, disapproval, approve or approval subject to minor modifications~~ **disapprove the plat** 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.~~

**B.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.

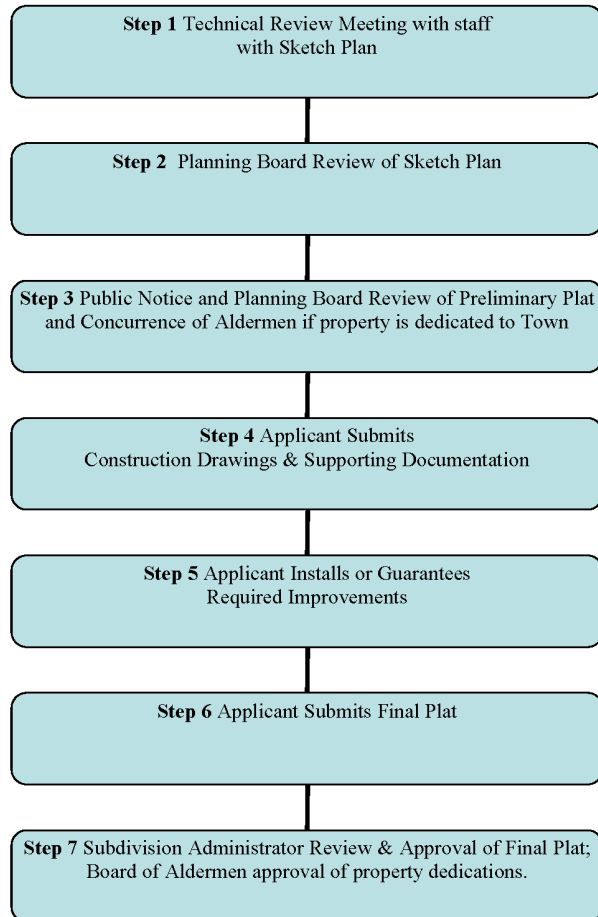
3.3.2 - Reserved.

3.3.3 - Major subdivision.

~~A major~~ **Any** subdivision ~~is defined as a of land, other than an exempt subdivision or where:~~

~~• There are new public roads or rights of way for dedication to the town, or More than four lots will result after the minor subdivision is complete, is a major subdivision subject to review and approval as provided below.~~

The numbers in the boxes below correspond with a detailed description of each step of the process on the following:



#### Step 1: Pre-application meeting with sketch plan

A. The applicant shall schedule a pre-application meeting with the subdivision administrator. The applicant shall bring a sketch plan of the proposed development to the meeting that meets the requirements set forth in ~~section 4.2~~ **section 1.4.6**.

B. The subdivision administrator shall review the sketch plan with the applicant for ~~general~~ compliance with ~~requirements, the zoning and eligible uses, and other needs~~ **this land use code**. The public works ~~director~~, fire ~~chief~~ **marshal**, local NCDOT district representative, **Metropolitan Sewerage District representative**, or other agency representative may be included in the technical review of the sketch plan. The ~~town staff~~ **subdivision administrator** shall advise the ~~subdivider~~ **applicant** of the regulations pertaining to the proposed subdivision and the procedures to be followed in the preparation and submission of the preliminary and final plats.

...

#### Step 3: Planning board review and approval of preliminary plat

A. ~~After reviewing the plat and making a recommendation,~~ **The applicant shall submit preliminary plat to** the subdivision administrator **who** shall place the item on the agenda of the next regularly scheduled planning board meeting. ~~along with his or her recommendation as to whether the preliminary plat should be approved.~~

B. ~~Notice shall be given as provided in Section 1.5.4(F). The property shall be posted ten to 25 days prior to the planning board meeting and notice made in local paper and town website to~~

~~inform the public that the property is under consideration for a major subdivision and said posting shall include the date of the planning board meeting to review the preliminary plat.~~

**C. Before the Planning Board reviews the preliminary plat, the following agencies shall be given an opportunity to make recommendations concerning the proposed subdivision plat:**

- 1. the district highway engineer as to the any proposed state streets, state highways, and related drainage systems;**
- 2. the county health director, public works director, MSD representative, and representatives of any other local public utility, as appropriate, as to proposed water or sewerage systems;**
- 3. the fire marshal; and**
- 4. the stormwater and floodplain administrator(s)**

**D.G.** The planning board shall review the plat ~~in accordance~~ **for conformity** with the requirements of this ~~ordinance, the zoning ordinance, land use code and any other applicable ordinance.~~ **shall either approve, approve with modifications, or deny the application for approval of the preliminary plat.**

Step 4: Applicant submits construction drawings and supporting documentation

**Following preliminary plat approval, the applicant** ~~Subdivider~~ shall submit engineer sealed construction drawings and supporting documentation for each individual phase or phases of development. The public works director, **building inspector** and fire ~~inspector~~ **marshal** shall review and approve the construction drawings for all public roads, private roads and water infrastructure. **If the preliminary plat was approved with modifications by the planning board, the applicant shall also submit a revised plat reflecting such changes.**

Step 5: Infrastructure/improvements installed or guaranteed

**A. Following** ~~Upon~~ approval ~~of by~~ the ~~preliminary plat~~ **public works director, building inspector and fire marshal**, the subdivider may proceed with the installation of or arrangement for required improvements in accordance with the approved preliminary plat and the requirements of this ordinance.

**B.** Prior to approval of a final plat, the subdivider shall have installed the improvements specified in this ordinance or guaranteed their installation.

**C.** Following the completion of the improvements and infrastructure, the subdivider shall provide as-built construction drawings to the public works director and the fire ~~inspector~~ **marshal**.

Step 6: Applicant submits final plat

**A.** The ~~subdivider~~ **applicant** shall submit a final plat to the subdivision administrator that meets the requirements of section 3.4.

~~**B.** The final plat shall be prepared by a registered land surveyor currently licensed and registered in the state by the state board of registration for professional engineers and land surveyors. The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in G.S. 47-30 as amended, in the Manual of Practice for Land Surveying in North Carolina, and Buncombe County.~~

~~**B.C.** The subdivider~~ **The applicant** shall submit the final plat within two years after the planning board's approval of the preliminary plat; otherwise, such prior approval of the preliminary plat shall become null and void. In ~~the~~ **event** ~~that the subdivider allows the previously approved preliminary, final plat to expire, the subdivider approval shall not be required to resubmit~~ **granted unless and until the applicant resubmits the preliminary plat for approval- by the planning board.**

**C.** If required, **evidence of formation of** a legally constituted homeowner's association and any maintenance agreements with the homeowner's association shall be submitted to the planning department with the final plat.

Step 7: Subdivision administrator review and approval of final plat



A. The subdivision administrator shall:

1. review the final plat for compliance with the approved preliminary plat ~~and;~~
2. ensure that the final plat meets the requirements of ~~.The town shall~~ **section 3.4;**
3. verify that all required infrastructure improvements have been completed ~~by conducting an on-site visual inspection of such improvements. Otherwise the improvements shall be guaranteed or that a financial guarantee has been provided as set forth in accordance with section 3.5.7.~~

B. The subdivision administrator shall ~~decide approval, disapproval, or approval~~ **approve, disapprove, or approve** subject to minor modifications within 15 days of submission of the plat.

C. **The applicant** ~~Approval~~ shall ~~be null and void unless final~~ **file the** plat ~~is offered~~ for filing and recording in the Office of the Register of Deeds ~~effor~~ Buncombe County within 90 days from ~~the~~ date of approval.

~~Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with G.S. 47-30, as amended.~~

~~D. The subdivider and~~ shall bring a recorded copy to the planning and development department for filing with the town clerk. No permits shall be issued for individual lots until a recorded copy is provided.

### ~~3.3.4 Subdivision for the purpose of conservation.~~

~~Subdivision for the purpose of conservation (distinct from a "conservation subdivision plan"). A single property may be subdivided for the purpose of habitat preservation, protection of ridge tops, surface waters, wetland or other natural features, for the protection of an archeological site, or for the purposes of creating a stormwater management facility, without meeting subdivision standards for lot size, access, or road frontage if the following conditions are met:~~

~~A. Maintenance responsibility is established with a recognized land trust, the town or other responsible entity;~~

~~B. The tract is placed in conservation in perpetuity; and~~

~~C. The town may retain access for the purpose of public safety protection.~~

**Section 33.** Section 3.4 of Chapter 3 of the Land Use Code, is hereby amended as follows:

## SECTION 3.4 - SUBDIVISION REQUIREMENTS

### 3.4.1 - Sketch plans.

~~A. Minor subdivision sketch plans.~~

~~The subdivider shall submit to the subdivision administrator a sketch plan of the proposed subdivision containing the following information:~~

- ~~1. The name of the subdivision and the proposed use and the name, address, and phone number of the owner.~~
- ~~2. A vicinity map showing the location of the subdivision in relation to neighboring tracts, subdivisions, roads, or nearby buildings and their zoning and uses.~~
- ~~3. Location of significant natural features such as water courses, ponds, rock outcroppings or forest and topography.~~
- ~~4. Location of flood hazard areas from FIRM map.~~
- ~~5. Location of existing or proposed utilities.~~
- ~~6. The boundaries of the tract and the portion of the tract to be subdivided.~~
- ~~7. Total acreage of the tract and acreage of the portion of the tract to be~~

~~subdivided.~~

~~8. Existing street and lot layout and dimensions, including right-of-ways.~~

~~9. Proposed new lot layout and dimensions and any rights-of-way or driveways to be built. Minimum driveway right-of-way shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

~~10. A statement from the town water department and from MSD that there is adequate water and sewer service may be provided lot(s), or a statement from the Buncombe County Health Department that indicates that the created lots either already have service or are appropriate for septic systems.~~

**~~B. Major subdivision sketch plans.~~**

The subdivider shall submit to the planning director or his/her designee seven copies of a sketch plan on 11" x 17" or smaller paper of the proposed subdivision containing the following information at a minimum:

1. The name of the subdivision ~~and~~, the proposed use and the name, address, and phone number of the owner.

...

9. Existing street and lot layout and dimensions, including rights-of-ways.

...

11. Designated open space, ... with the planning **director** and the recreation and parks directors.

**3.4.2 - Preliminary and final plat submittal requirements.**

A. For minor subdivisions, the applicant shall submit one 18" x 24" or larger preliminary plat and one 11" x 17" or smaller ~~copies~~ of the preliminary plat along with a completed checklist to the subdivision administrator in both hard copy and digital format;

B. For major subdivisions, the applicant shall submit eight 18" x 24" or larger plats along with a completed checklist to the planning and development department in both hard **copy** and digital format;

**Section 34. Section 3.5 of Chapter 3 of the Land Use Code, is hereby amended as follows:**

**SECTION 3.5 - SUBDIVISION DESIGN STANDARDS**

**3.5.1 - Lots.**

...

B. For subdivisions in traditional neighborhood development (TND), institutional campus development (ICD) zoning districts, or **projects developed pursuant to a** special use permit ~~subdivisions~~, the lot lay-out shall conform to the approved master plan.

C. Street right-of-way, setback requirements from North Carolina surface water streams as designated on USGS topography maps, sidewalks and other publicly dedicated areas shall not be included in the calculation of lot size. The location of structures and their setbacks shall be indicated on the preliminary plat. Qualified conservation subdivision plans shall meet district density requirements, but have flexibility in all other lot requirements as long as ~~the~~ **the proposed subdivision** meets the site capacity analysis.

D. Duplexes on a single lot and zero lot line dwellings are allowed within all districts, except heavy industrial (HI-0), ~~as long as they meet the minimum~~ **provided that** requirements **are met** for minimum lot size for single-family use including density and perimeter setbacks of the district in which they are located. A duplex meeting all the requirements for a single-family lot shall be counted as one residential density unit or RUA for the designated density of the zoning district in which ~~they are~~ **the duplex is** located.

E. Duplexes may be subdivided as a two-unit ~~town-home~~**townhome** or condominium for the purpose of separate ownership of the two individual units as long as:

...

4. Common areas and maintenance requirements, such as that for driveways, open space and stormwater management areas are enumerated as part of the subdivision, or provided under common ownership in a ~~town-home~~**townhome** or condominium plan.

5. Triplexes or other multi-dwelling units of three or more units must follow guidelines of applicable special use category or multi-family requirements.

### 3.5.2 - Streets.

A. Unless a lot is set aside for conservation in perpetuity, all lots ~~to be platted~~ shall . . .

**B. All streets, driveways, and recorded driveway or right-of-ways** ~~therefore~~ shall be ~~as indicated~~**designed and constructed according to the requirements set out** in the Town of Black Mountain standards and Details Manual.

...

~~D. Reserved.~~Any access serving more than three lots shall be considered a road. Roads ~~providing access to more than four lots must be constructed to requirements as indicated in the Town of Black Mountain Standards and Details Manual and~~ may be dedicated to the town upon **approval of** a written street dedication request.

~~E. One-way roads shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

F. The fire ~~inspector~~**marshal** and public works director may authorize a variance up to 20 percent (up to eight feet variation on right-of-way, and up to four-foot variation on total travel surface), based on topography, landscape context, traffic and public safety needs.

~~G. Every street shall be designed to accommodate storm drainage standards as indicated in the Town of Black Mountain Standards and Details Manual.~~

~~H. The grade of streets shall be in compliance with the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

~~I. G.~~ The town may accept streets for ownership and maintenance one year after the completion date of the final road surfacing ~~upon a written. Application for street dedication request and upon approval acceptance must be made in writing approved~~ by the public works director and fire ~~inspector~~**marshal**.

~~H. Final plans for All roads, including private streets, cul-de-sacs and T-turnarounds within a major subdivisions shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual. Final plans will include a statement by a licensed professional engineer that road is all roads are in compliance with the Town of Black Mountain Standards and Details Manual.~~

~~1. I.~~ In a conservation subdivision, . . .

~~2. In a special use permit, the design of any shared parking and loading areas which are also serving to access more than three residential units must be in compliance with the Town of Black Mountain Standards and Detail Manual.~~

~~K. J.~~ No base course shall be placed on muck, pipe clay, organic matter or other unsuitable matter, and a minimum compaction rate of subgrade prior to paving shall be as indicated in the Town of Black Mountain Standards and Details Manual ~~and certified by a licensed engineer.~~

~~L. Reserved.~~

**K.** Traffic impact studies may be required for subdivision roads connecting to the town or NCDOT system per Section 3.5.8 of ~~the Town of Black Land Use~~**this** code or NCDOT guidelines.

**L.** Where curbs are provided on streets or where curbs and sidewalks are constructed within a subdivision, any construction shall be in full compliance with the provisions of G.S. 163-44.14 which sets forth standards for providing curb ramps or curb cuts for handicapped persons.

~~O. Entrances into subdivisions which intersect with a major thoroughfare shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

~~P. Property lines at street intersections shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

~~Q.~~ **M.** Pre-existing roads which do not meet these standards may be incorporated into a subdivision ~~plat~~ only upon approval of the fire ~~department~~**marshal** and public works director. Where pre-existing roads do not have a designated right-of-way, right-of-way shall be established to cover at least the maintenance area of the roadway (back of ditch to back of ditch).

**N.** If an existing street serving the proposed development does not meet minimum town street standards, the developer shall make the necessary improvements to bring the street up to town standards or shall make a payment to the town to cover the cost of such improvements.

### 3.5.3 - Utilities.

A. The preliminary subdivision plat must be accompanied by satisfactory evidence as to the proposed method and system of water supply and sanitary sewage collection and disposal. The town requires connection to existing public water and sewer lines if any such lines are located within 300 feet of the property boundary, unless topography ~~or right-of-way~~ does not allow such connection **or requisite easements cannot be obtained**. The installation of all said systems except wells or septic tanks serving only one connection shall be required prior to final plat approval unless financially guaranteed.

...

### 3.5.5 - Pedestrian circulation (major subdivisions only).

A. All major subdivisions ~~and special use developments~~ shall have a plan for internal pedestrian circulation as well as points of connectivity with exterior transportation corridors.

B. Major subdivisions ~~that are not qualified as,~~ **other than** conservation subdivisions, shall provide a network of sidewalk or greenway trails to serve all ~~occupiable~~ lots. The total length of these facilities shall be equal or greater than the total of linear feet of new roadway as measured at the centerline. As part of preliminary plat review, the planning board may require, ~~or as part of special use permits, the zoning board of adjustment may require, the following:~~ **that the applicant:**

...

~~C. The location and specifications of sidewalks or trails shall be shown on preliminary plats and master plans under consideration by the building inspector for issuance of a building permit.~~

~~D.~~ **C.** Whenever practicable, ...

~~E.~~ **D.** Sidewalks shall ...

~~F.~~ **E.** Sidewalks shall ...

### 3.5.6 - Open space requirements (major subdivisions only).

A. All major subdivisions must dedicate the equivalent of five percent of the total land area of the original parcel or combination ~~of~~ **parcels** used in the subdivision as dedicated, common open space.

...

~~D. Requirements concerning land dedicated to the town for recreational purposes. The board of aldermen must approve property dedications being offered to the town for parks and greenways facilities at the time of final plat approval. The board of aldermen may~~**The town council may, prior to approving the final plat or otherwise accepting dedication of land, request**

review by the recreation and parks commission before making their determination. Dedications should meet the following criteria:

...

### 3.5.7 - Improvement guarantees.

...

B. The town may ...

1. Surety performance bond(s) shall be obtained from a surety bonding company authorized to do business in North Carolina. The bond(s) shall be payable to the Town of Black Mountain and shall be in an amount equal to 1.25 times the entire cost, as estimated by an engineer of installing all required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat. ~~The duration of the bond (s) shall be until such time as the improvements are approved by the planning and development services department. The department shall not give said approval until all required improvements have been installed.~~ **The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period. An extension shall only be for the duration necessary to complete the required improvements.**

2. Cash or equivalent security. The subdivider shall deposit cash or other instrument readily convertible into cash at face value, **either with** the town or in escrow with a financial institution designated as an official depository of the town. The amount of the deposit **shall be** equal to 1.25 times the cost, as estimated by, an engineer of installing all required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat. The subdivider shall file with the town an **agreement** between the financial institution and himself guaranteeing that:

...

**Section 35. Section 3.6 of Chapter 3 of the Land Use Code, is hereby amended as follows:**

## SECTION 3.6 - DEDICATION AND CLOSURES OF RIGHTS-OF-WAY OR EASEMENTS TO THE TOWN

### 3.6.1 - Rights-of-way and easements.

...

C. Rights-of-way which are intended to remain private or which are not accepted by the town at the time of approval of the final plat, must be ~~accompanied by a dedication~~ **subject** to a ~~neighborhood association and include a road~~ maintenance agreement. ~~for the right of way.~~

### 3.6.2 - Dedication and closures of rights-of-way or land to the town.

#### ~~3.6.2.1 — Closures of rights-of-way.~~

~~A. — Reserved.~~

**B. A.** Property owners . . . . Rights-of-way closures shall follow these procedures:

...

~~3.6.2.2~~ **3.6.3** - Dedication of Streets, Rights-of-Way or Land to the Town-

...

B. The ~~board of aldermen~~ **town council** shall not accept as a public street, any street extension, new street or part thereof until preliminary plans have been approved by the planning ~~and development~~ **department** director, public works director, and fire ~~inspector~~ **marshal**, and unless the street or part thereof has met the following requirements:

1. A street dedication petition **signed by all owners of property over which the street or right-of-way passes** is filed with the Planning Department ~~and must be signed by all property owners.~~
2. The road ~~must meet~~ **meets** all requirements as indicated in the Town of Black Mountain Standards and Details Manual.

...

**Section 36.** Chapter 4 of the Land Use Code is retitled as “Zoning Regulations” and amended to add of a new section numbered 4.1, entitled “Purpose” which shall read as follows:

CHAPTER 4. - ZONING ~~DISTRICT REQUIREMENTS~~ **REGULATIONS**

SECTION 4.1 – **PURPOSE.**

**4.1.1 – Purpose and authority.**

These zoning regulations are adopted to provide guidelines for the development of land in Black Mountain, pursuant to the authority granted in N.C.G.S. § 160D-702, consistent with the General Statutes of the State of North Carolina, the Town of Black Mountain Code of Ordinances, and the Comprehensive Plan to address the following public purposes:

1. To provide adequate light and air;
2. To prevent the overcrowding of land;
3. To avoid undue concentration of population;
4. To lessen congestion in the streets;
5. To secure safety from fire, panic, and dangers;
6. To facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and
7. To promote the health, safety, morals, or the general welfare of the community.

**Section 37.** Section 4.1 of Chapter 4 of the Land Use Code is renumbered as section 4.2 and revised to read as follows:

SECTION ~~4.1~~ **4.2** - ZONING MAP

~~4.1.1~~ **4.2.1** - Designation of zoning map.

The map entitled Town of Black Mountain Zoning Map as adopted by the Town of Black Mountain ~~Board of Aldermen~~ **town council** and certified by the town clerk establishes the official zoning and overlay districts. This map will be maintained and posted at the Town of Black Mountain Planning and Development Department. Digital and ~~paper~~ **paper** copy versions of this map shall also be made available through the planning and development department for reference.

~~4.1.2~~ **4.2.2** - Interpretation of the zoning map.



- A. Unless otherwise specified, zoning district boundaries ~~are platted lot run with property lines or the centerline of streets, alleys or other rights-of-way, or such lines extended.~~ **run with property lines or the centerline of streets, alleys or other rights-of-way.**
- B. Boundaries indicated as following railroad lines ~~shall be interpreted as to be run along a line midway between the tracks.~~ **shall be interpreted as to be run along a line midway between the tracks.**
- C. Boundaries indicated as approximately following the centerline of streams, rivers, channels or lakes ~~shall be interpreted as following~~ **shall follow** the ~~exact~~ **exact** centerline ~~of the waterway.~~
- D. Where a zoning district boundary divides a land parcel under a single ownership into two districts, ~~then the requirements of the less restrictive zone shall be applied to the entire parcel shall be zoned for the less restrictive use by the adjustment of the boundaries and the zoning district boundary adjusted accordingly,~~ **the requirements of the less restrictive zone shall be applied to the entire parcel shall be zoned for the less restrictive use by the adjustment of the boundaries and the zoning district boundary adjusted accordingly,** provided that the **zoning district** boundary adjustment is a distance of less than 100 feet; **otherwise, an application for rezoning must be filed pursuant to the process set forth in Chapter 1 of this Land Use Code.**

...

#### ~~4.1.3~~ **4.2.3** - Changes to official zoning district map.

Changes made ~~in zone to~~ **in zone to** zoning district boundaries or other matters portrayed on the official zoning district map shall be made in accordance with the provisions ~~of this code and NC General Statutes, and according to~~ **of this code and NC General Statutes,** Section 1.5 of this ~~ordinance code.~~ **ordinance code.** Changes shall be entered on the official zoning district map promptly after the amendment has been approved by the ~~board of aldermen town council.~~

#### ~~4.1.4~~ **4.2.4** - Town of Black Mountain Zoning Map.

This map and its boundaries shall be incorporated and made part of ~~this ordinance.~~ **these regulations.**

**Section 38.** ~~Section 4.2 of Chapter 4 of the Land Use Code is renumbered as section 4.3 and revised to read as follows:~~

#### ~~SECTION 4.2~~ **4.3** - GENERAL ZONING PROCEDURES

##### ~~4.2.1~~ **4.3.1** - Conformance required.

- A. No building or land shall be used or occupied and no building or structure or part thereof shall be erected, moved or structurally altered except in conformity with the town zoning regulations.
- B. No building or zoning permit shall be issued on new lots ~~which were~~ created by the subdivision of land unless:
1. the subdivision **is exempt from the subdivision regulations;**
  2. **the subdivision is a major subdivision and a preliminary plat** has been approved ~~and is;~~ **or**
  - ~~1-3.~~ **the final plat for the subdivision has been** recorded with the register of deeds for Buncombe County;
- ~~C. Uses not designated as permitted by right or subject to additional conditions, shall be prohibited.~~
- ~~D. C.~~ **C.** Conditional ~~uses or~~ Special uses are permitted upon compliance with the additional ~~regulations~~ **conditions** imposed and as specified by the ~~zoning~~ board of adjustment.
- ~~E. Any building, structure, or use of land existing at the time of the enactment of this chapter, 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 provisions of the section on nonconformities.~~
- ~~F. Any introduction or initiation of a nonconforming use or structure after the adoption of these regulations shall be treated as a zoning violation.~~
- ~~G. D.~~ **D.** Unless otherwise specified ~~within by the~~ **within by the** regulations governing the district within which a project (new development or redevelopment) is located, all development must adhere to ~~other all development regulations enumerated by town ordinances,~~ **other all development regulations**, including but not limited to flood hazard prevention (see ~~land use code LUC~~ chapter 2), stormwater (see LUC ~~),~~ **Chapter 8**), lighting (see Town of Black Mountain



Ordinances ~~title IX: Section 103~~**Chapter 20, Article VII**), signage (see LUC chapter 9), parking (see LUC chapter 10), pedestrian planning and other requirements (see LUC chapter 4).

~~H. E. Adult businesses, amusements, massage therapists and massage therapy~~ **Amusements**, solicitors, peddlers and itinerant merchants shall be allowed as provided ~~underin Chapter 9 of the Town of Black Mountain Code of Ordinances-chapter 9, or as identified as health care services within the land use code definitions.~~ Nothing in this chapter shall be construed or interpreted to preempt or supersede the town's adopted business regulations.

#### ~~4.2.2~~ **4.3.2** - Minimum regulations.

...

#### ~~4.2.3~~ **4.3.3** – Zoning permits.

A. *Zoning administrator.* It is the intention of this chapter that all questions arising in connection with compliance ~~to~~**with**, and enforcement of ~~Zoning, zoning regulations~~ shall be the responsibility ~~if~~**of** the zoning administrator and that such questions shall be presented to the board of adjustment only on appeal from the decision of the zoning administrator.

B. *Zoning permit required.* No building, sign or other structure (except as otherwise provided ~~for in this ordinance~~**these regulations**) shall be erected, moved, extended or enlarged or structurally altered, nor shall the use conducted within the ~~building~~**structure** change, nor shall any excavation or filling of any lot for the construction of any ~~building~~**structure** be commenced, nor substantial clearing, grading, or excavation be commenced, nor shall any change in the use of a property be commenced until a zoning permit is issued or the zoning administrator reviews and ~~signs the building permit, business privilege license, stormwater, sedimentation and erosion control, or other such permits approved for such work. Fees for permits are established by the fee town's schedule, except such permits as are issued by other agencies~~**approves the issuance of permits required for such work. No zoning, building or grading permit shall be issued without first obtaining the approval of the zoning administrator who shall certify that the development described on the application complies with all existing zoning regulations.**

C. *Zoning permit not required.* A zoning permit is not required, ~~notwithstanding~~**notwithstanding** any other provisions of this ordinance, for the following:

...

4. Mailboxes, birdhouses, flag poles, pump covers, ~~fences~~ and doghouses;

...

D. *Expiration of permits.* Any zoning permit issued in accordance with this ~~ordinance~~**chapter** shall expire ~~within~~ six months after the date of issuance if the work authorized by the permit has not been commenced.

... If the permit recipient has proceeded with due diligence and in good faith and conditions have not changed substantially so as to warrant a new application, the ~~planning director or~~ zoning administrator may grant extensions for periods up to six months. All such extensions may be granted without resort to the formal processes and fees required for a new permit.

**Section 39.** Sections 4.2.4 and 4.2.5 of Chapter 4 of the Land Use Code are deleted.

**Section 40.** Section 4.3 of Chapter 4 of the Land Use Code is renumbered as section 4.4 and revised to read as follows:

#### SECTION ~~4.3~~ **4.4** - PROVISIONS GOVERNING ALL LOTS

##### ~~4.3.1~~ **4.4.1** - Lot size and lot reductions.

A. All subdivision of property created after the effective date of this chapter must conform to the lot requirements of the district in which it is located. ~~No yard or lot existing at the time of the passage of this chapter shall be altered except in compliance with the minimum requirements.~~

**C. Subdivisions for the purpose of land conservation or for the dedication of open space which are exempt from the subdivision regulations in Chapter 3 of this LUC are exempt from the requirements of this chapter.**

#### **4.3.2 4.4.2 - Lot access.**

A. No building, structure or use of land for other than conservation purposes shall be established on a lot which does not have access to a **public** street directly or by means of an easement. . . .

B. Up to three lots may share access **by means of onea shared** right-of-way so long as each lot has off-street parking for two cars ~~available in addition to and from, which parking shall not be located within~~ the right-of-way **of the private drive**. In cases where four or more lots share access through a common right-of-way, the right-of-way shall be considered and designed as a named roadway and meet the requirements of ~~the~~ Town of Black Mountain Standards and Details Manual.

1. In a conservation subdivision, rights-of-way that cannot meet the road standards for a subdivision without compromising performance goals of the conservation subdivision requirements (see 7.5.4) and which access more than three lots must meet the approval of the public works director and fire inspector for the purpose of waste collection, snow removal and maintenance, ~~as well as and~~ emergency vehicle access.

2. **In a development undertaken pursuant to** a special use permit, the design of any shared parking and loading areas ~~which are that~~ also serving ~~to~~ access more than three residential units must ~~meet the requirements of the Town of Black Mountain Standards and Details Manual and~~ be approved by the fire **marshal** ~~inspector~~.

~~C.—If the street or road serving the proposed development does not meet the town street standards, the developer shall make the necessary improvements to bring the street or road up to the requirements as indicated in the Town of Black Mountain Standards and Details Manual or provide other improvements as determined by the board of aldermen as a result of a traffic impact analysis, or shall make a payment to the town to cover the cost of such improvements. The town board of aldermen may waive this requirement for street or road improvements if the town determines that the improvement will cause more community disruption than justified by the increased traffic from the proposed development.~~

~~D.—Subdivisions for the purpose of land conservation or for the dedication of open space may be exempt from requirements of this section pursuant to subdivision regulations of the town.~~

**E. C. Encroachment allowance for access within 30-foot buffer requirements (see also 8.2.10)** Lots which include or are adjacent to perennial or intermittent surface waters as indicated on the most recent version of the 1:24,000 scale quadrangle topographic maps prepared by the USGS are subject to a 30-foot setback from the top of the bank of that surface water in accordance with phase II stormwater regulations. **(see section 8.2.10)** ~~Pre-existing lots and those areas identified in adopted master plans are allowed a minimum encroachment into the 30-foot buffer for the purpose of transportation and access if the following criteria are met:~~

- ~~1. It is for the purpose of vehicle or non-motorized transportation and access only, such as trails, greenways, walkways, driveways, alleyways or access roads. Residential, accessory or commercial structures are not included in this encroachment allowance.~~
- ~~2. Utility structures that follow the right-of-way for the access are only allowed within the disturbance area of the roadway, an existing utility easement or bridge structural footprint.~~

- ~~3. It is the minimum encroachment necessary for access of the property, or is part of a trail, sidewalk or street alignment included on the town's pedestrian master plan, greenway plan or transportation plan or other approved master plan.~~
- ~~4. The encroachment area does not exceed more than ten percent of the total land area within the required buffer area, and shall never exceed more than 100 feet of linear disturbance for 1,000 feet of linear stream.~~
- ~~5. Provides the minimum area of disturbance needed for access and includes mitigation of stream and stream bank disturbance as part of the design.~~
- ~~6. Encroachments which include stream crossings should be designed so that crossing is perpendicular to the stream centerline to the maximum extent practicable.~~
- ~~7. Encroachments which are parallel to the watercourse should be designed to incorporate the maximum buffer practicable and still allow the necessary encroachment. Additional stormwater management techniques to slow and filtrate run-off shall be included between the disturbed area and the waterway. Such parallel encroachments may be subject to additional review by the state division of water quality.~~

~~Any encroachment into the required surface water buffer setback which exceeds this allowance shall require a variance from the zoning board of adjustment.~~

~~4.3.3~~ **4.4.3** - Setbacks, corner lots and double frontage lots.

**A.** ~~The~~ Yard and setback requirements ~~for the district in which the development is proposed~~ shall be met unless variance is granted by the ~~zoning~~ board of adjustment.

...

**F.** ... However, in no case shall setbacks be less than 15 feet, except in the ~~C-1CB~~, central business district, where the minimum setback is 12 feet.

**G.** No building or structure shall be placed within a roadway or highway right-of-way, except as otherwise provided in ~~this ordinance. these regulations.~~

...

~~J. Reserved. K.~~ Allowable encroachments into required setbacks. ...

**4. Fences and walls.** ~~Fences and walls may be located within the required minimum front, side, or rear setback as long as it doesn't cross property line boundaries.~~

**5.** ... If a handicapped accessibility or life safety feature cannot meet this requirement due to the location of an existing structure or other impeding site feature on a residential lot, ~~then~~ the setback requirement ~~for these structures can~~ shall be ~~adjusted~~ **waived** to the extent necessary ~~by to accommodate~~ the ~~planning director. accessibility or life safety feature.~~

~~4.3.4~~ **4.4.4** - Steep hillside setback allowance for residential lots.

**A.** On **residential** lots where the first 45 feet from the edge of the pavement exceeds 30 percent slope, front yard setbacks ~~may be~~ **are** adjusted as follows:

...

~~4.3.5~~ **4.4.5** - Location of buildings on irregularly shaped lots.

Locations of front, side and rear setback lines on irregularly shaped lots shall be determined by the zoning administrator **in writing**. Such determinations shall be based on the spirit and intent of the district regulations to achieve appropriate spacing and location of building(s) on individual lots. **Appeals of such determinations shall be made to the board of adjustment following the procedures set out in Section 1.7.2.**

~~4.3.6~~ **4.4.6** – Visibility at Intersections

...

**Section 41. Section 4.4 of Chapter 4 of the Land Use Code is renumbered as section 4.5 and revised to read as follows:**

**SECTION ~~4.4~~4.5 - PROVISIONS GOVERNING ALL BUILDINGS**

~~4.4.1~~ **4.5.1** - Location of building lines.

...

~~4.4.2~~ **4.5.2** - Height regulations.

A. **No structure** ~~Structures~~ shall ~~not~~ be erected or altered so as to exceed the height regulations of the district in which it is located.

...

F. Free-standing communications towers ~~are permitted as constructed pursuant to a conditional~~ **special** use ~~and permit~~ are exempt from building height requirements of this section.

...

~~4.4.3~~ **4.5.3** - Principal buildings and structures per lot.

A. Every ~~building~~ **structure** erected, moved or structurally altered shall be located on a single lot and in no case shall there be more than one principal building and its customary accessory buildings on the lot unless:

1. As part of an approved industrial operation within either of the industrial districts (LI-8 or HI-0); or
2. As part of an approved ~~conditional or~~ special use permit; or
3. As part of a pre-existing nonconforming use-; **or**
4. **As a secondary dwelling.**

B. Duplexes within a single lot will be treated as a single primary structure for the purposes of compliance with zoning district lot size and setback unless regulated by the minimum lot size and density table for steep slope lots. For separate units within a zero-lot line structure such as those for some types of ~~town homes~~ **townhomes** or attached houses, the individual units will be considered the primary structure for each lot.

~~G. Please see chapter 5 for guidelines on accessory buildings.~~

**4.5.4 - Accessory structures.**

A. **In no case shall an accessory structure be located closer than five feet to the nearest property line.**

B. **For land used for agriculture or as a bona fide farm that is greater than one acre, there is no limit to the number of accessory structures allowed, provided that such structures shall be incidental to the agricultural use and shall not cover more than 30 percent of the total lot area.**

C. **In industrial districts, there is no limit to the number of accessory structures provided that such structures are incidental to the industrial use.**

D. **In commercial districts, unless otherwise provided in a special use permit, no more than two accessory structures shall be permitted per lot.**

E. **In residential and mixed-use districts, no more than two accessory structures shall be permitted per lot, provided that any such structure shall meet the following requirements:**

1. **Accessory structures shall not be more than two stories.**
2. **For lots adjacent to town or state roadways, accessory structures shall be located only in the side or rear yards.**

3. For lots not adjacent to town or state roadways, accessory structures may be located in what is determined as the front yard by the zoning administrator. The accessory structure may be located no further forward than the primary structure furthest from the road of any adjacent properties never to be less than the existing setback requirements.

4. Accessory buildings shall not cover more than 30 percent of the required side or rear yards. Accessory structures may require screening at the direction of the zoning administrator if the accessory structure may be considered a nuisance under the town's nuisance regulations or if it is being used for commercial purposes while abutting a residential use or district.

~~4.4.4 — Storm and sanitary sewerage.~~

~~Storm and sanitary sewerage shall be provided as required in the phase II stormwater ordinance or other town or state regulations and the town water regulations (title V, chapter 52) [chapter 48, article III of the Code of Ordinances]. In addition, those projects that do not fall within the stormwater ordinance shall also make provisions to minimize the impact of stormwater runoff on adjoining properties and shall comply with sedimentation and erosion control requirements (see ).~~

~~4.4.5 — Conversion from residential to non-residential use.~~

~~All residences, which are converted to any type of non-residential use, are required by North Carolina State Law to have a building inspection done. Any converted building shall be required to comply with required site plan submittal and to obtain a commercial certificate of occupancy.~~

~~4.4.6~~ **4.5.5** - Use and location of dumpsters.

Dumpsters are allowed in all districts in accordance ~~to~~**with** the following standards:

...

~~E. Dumpsters in common use as part of a special or conditional use permit must meet and maintain screening and location requirements as approved in a CUP or SUP plan.~~

...

~~G. — Requests for variances within the historic district must be reviewed by the historic preservation commission prior to the ZBA hearing.~~

~~4.4.7~~ **4.5.6** - General screening and buffering requirements.

A. Where a **lot upon which a** commercial or industrial use **is occurring** abuts a **lot upon which a** residential or mixed-use ~~district, or where a pre-existing nonconforming use is within a residential district, is occurring~~ there shall be an opaque wall or fence of at least four feet in height along the property line. A vegetative buffer of at least ten feet in width and six feet in height and of sufficient density may be permitted in lieu of a structural screen upon approval of the zoning administrator.

**Section 42.** Section 4.5 of Chapter 4 of the Land Use Code is renumbered as section 4.6 and revised to read as follows:

**SECTION ~~4.5~~ 4.6** - DISTRICTS ESTABLISHED

~~4.5.1~~ **4.6.1** - Base zoning districts established.

**A.** Base zoning districts are created to provide comprehensive land use regulations throughout Black Mountain. There are 12 base zoning districts that provide for a variety of uses ~~that are~~ appropriate to the character of the areas in which they are located. ~~For the purpose of this ordinance, The Town~~

of Black Mountain is hereby divided into the ~~following~~ base zoning districts. ~~These districts shall comply with all of the general and specific requirements of this ordinance. In order to carry out and implement the purpose and intent of the land use code, the following as reflected on the zoning districts are established:~~ **map adopted pursuant to section 4.2.1 of this chapter.**

**B. The following zoning districts are established:**

1. Conservation residential district (CR-1)
2. Suburban residential district (SR-2)
3. Town residential district (TR-4)
4. Urban residential district (UR-8)
5. Office and institutional district (OI-6)
6. Neighborhood mixed use district (UR-8)
7. Central business district (CB)
8. Highway business district (HB-8)
9. Light industrial district (LI-8)
10. Heavy industrial district (HI-0)
11. Traditional neighborhood development (TND)
12. Institutional campus district (ICD)

~~4.5.2~~ **4.6.2.** - Overlay districts established.

**A.** Additionally, overlay districts are created to further regulate land use, dimensional requirements, and site design in significant or sensitive areas of town. ~~The requirements for the overlay districts are set forth in.~~

1. Wellhead protection overlay
2. Flood damage prevention overlay
3. Historic overlays (historic district and historic conservation district)
4. Fire district overlay
5. Pedestrian master plan overlay
6. U.S. 70 corridor overlay

~~4.5.3~~ **4.6.3** - Other requirements.

**A.** In addition to zoning district regulations see the following sections for other requirements:

1. ~~A.~~ See chapter 3 for subdivision requirements.
2. ~~B.~~ See chapter 5 for additional **requirements** ~~use standards~~ for certain uses.
3. ~~C.~~ See chapter ~~67~~ for ~~conditional uses~~. ~~See for~~ special uses.
4. ~~D.~~ See **chapter 8** for land development and environmental regulations.
5. ~~E.~~ See chapter 9 for sign regulations.
6. ~~F.~~ See chapter 10 for parking requirements.
7. ~~G.~~ See **chapter 11** for infrastructure resources, contacts and requirements.  
~~I. See for inclusionary housing requirements.~~

**Section 4.3.** Section 4.6 of Chapter 4 of the Land Use Code is renumbered as section 4.7 and revised to read as follows:

SECTION ~~4.6~~ **4.7** - ZONING REGULATIONS BY DISTRICT

~~[TABLE]~~

**See Section 4.7.15 for the permitted use table.**

**See Section 4.7.16 for the district dimensions standards table.**

~~4.6.1~~ **4.7.1** - Conservation residential district (CR-1).

~~4.6.1.1~~ **4.7.1.1** *Purpose- and intent.*

...

~~4.6.1.2~~ **Uses.**

The chart below indicates the uses generally permitted in the CR-zoning district.

[TABLE]

Exclusions: Correctional institutions, Manufactured Home Parks, all uses not specifically enumerated.

~~4.6.1.3~~ *Dimensional requirements (CR-1).*

[TABLE]

~~4.6.2~~ **4.7.2** - Suburban residential district (SR-2).

~~4.6.1.1~~ **4.7.2.1** *Intent Purpose and intent.*

The suburban residential district ~~is established to protect~~**protects** areas in which the principal use of the land is ~~single-family~~ residential and where less dense development is preferred for the protection of slopes or environmentally sensitive areas, ~~traditional single-family~~ neighborhoods and the preservation of open space.

~~4.6.2.2~~ **Uses.**

The chart below indicates the uses generally permitted in the SR-zoning district.

[TABLE]

**Exclusions:** Correctional institutions, Manufactured Home Parks, all uses not specifically enumerated

~~4.6.2.3~~ *Dimensional requirements (SR-2).*

[TABLE]

~~4.6.3~~ **4.7.3** - Town residential district (TR-4).

~~4.6.3.1~~ **Intent.**

**4.7.3.1** *Purpose and intent.*

...

~~4.6.3.2~~ **Uses.**

The chart below indicates the uses generally permitted in the TR-4 zoning district.

[TABLE]

Exclusions: Correctional institutions, all uses not specifically enumerated

~~4.6.3.3~~ *Dimensional requirements (TR-4).*



~~[TABLE]~~

~~\*A density bonus may be available for developments that include affordable housing units in accordance with~~

~~4.6.4~~ **4.7.4** - Urban residential district (UR-8).

~~4.6.4.1~~ **Intent.**

**4.7.4.1 Purpose and intent.**

...

~~4.6.4.2~~ **Uses.**

~~[TABLE]~~

~~The chart below indicates the uses generally permitted in the UR-8 zoning district.  
Exclusions: Correctional institutions, all uses not specifically enumerated~~

~~4.6.4.3~~ *Dimensional requirements (UR-8).*

~~[TABLE]~~

~~\*A density bonus may be available for developments that include affordable housing units in accordance with~~

~~4.6.5~~ **4.7.5** - Office and institutional district (OI-6).

~~4.6.5.1~~ **Intent.**

**4.7.5.1 Purpose and intent.**

...

~~4.6.5.2~~ **Uses.**

~~The chart below indicates the uses generally permitted in the OI-6 zoning district.~~

~~[TABLE]~~

~~**Exclusions:** Amusements, automotive sales and service, drive-through or drive-up uses, mini-storage, commercial warehousing, correctional institutions, outdoor kennels, communications towers (except those attached to roofs or buildings), manufactured home parks, any commercial use that creates exterior noise, fumes, odors, dust, vibrations, and all uses not specifically enumerated~~

~~4.6.5.3~~ *Dimensional requirements (OI-6).*

~~[TABLE]~~

~~\*A density bonus may be available for developments that include affordable housing units in accordance with Chapter 12~~

~~4.6.6~~ **4.7.6** - Neighborhood mixed use district (NMU-8).

~~4.6.6.1 Intent.~~**4.7.6.1 Purpose and intent.**

The neighborhood mixed use district is established to serve the needs of the surrounding residential neighborhoods by providing compatible goods and services without negatively impacting the residential nature of the adjacent neighborhoods. It is also intended to establish areas for low-intensity business centers which are accessible to pedestrians from the surrounding residential neighborhoods ~~and to minimize conflicts with surrounding residential uses in terms of architecture, noise, smell, or traffic. The neighborhood mixed use district shall retain the residential character of buildings in both appearance and scale and should provide for the daily convenience and personal service of the surrounding neighborhood..~~

~~4.6.6.2 Uses.~~

~~The chart below indicates the uses generally permitted in the NMU-8 zoning district.  
[TABLE]~~

**Exclusions:** ~~Amusements, automotive sales and service, drive-through uses, mini-storage, commercial warehousing, correctional institutions, outdoor kennels, communications towers (except those attached to roofs or buildings), manufactured home parks, any commercial use that creates exterior noise, fumes, odors, dust, vibrations, and all uses not specifically enumerated.~~

~~4.6.6.3 Dimensional requirements (NMU-8).~~

~~[TABLE]~~

~~\*A density bonus may be available for developments that include affordable housing units in accordance with.~~

~~4.6.6.4~~ **4.6.6.2 Supplementary district requirements (NMU-8).**

~~A.~~ New construction within this district shall retain the characteristics of a residential neighborhood. ~~New construction within this district~~ **and** shall not include metal buildings or cinder block buildings as the primary structure on a lot, ~~and.~~ **Newly constructed structures**, unless part of a special use permit or an accessory structure, shall have a pitched roof and other characteristics of single-family homes within the adjacent residential neighborhoods.

~~4.6.7~~ **4.7.7 - Central business district (CB).**~~4.6.7.1 Intent.~~**4.7.7.1 Purpose and intent.**

...

~~4.6.7.2 Uses.~~

~~The chart below indicates the uses generally permitted in the CB zoning district.  
[TABLE]~~

**Exclusions:** ~~Automotive sales, mini-storage, drive thru restaurants, commercial warehousing not associated with a retail operation, correctional institutions, outdoor kennels, communications towers (except those attached to roofs or buildings),~~

~~manufactured home parks and all uses not specifically enumerated.~~

#### ~~4.6.7.3 Dimensional requirements (CB).~~

~~[TABLE]~~

~~\*Inclusion of affordable housing units in accordance with are encouraged.~~

#### ~~4.6.7.4~~ **4.7.7.2** *Supplementary district requirements (CB).*

...

B. Existing Sidewalks may be used for outdoor seating, **Sidewalks may also be used for** displays or temporary signs as permitted ~~under the sign ordinance~~ **by Chapter 9 of this LUC** as long as four feet (4' or 48"), as measured from the back of the curb toward the building, is maintained as free and clear passage for pedestrians and wheelchairs.

...

~~D. In order to preserve the historic character and walkability of the central business district and to maintain an accessible and attractive downtown, the placement of newsracks or newspaper boxes is governed by guidelines in chapter 5.~~

#### ~~4.6.8~~ **4.7.8** - Highway business district (HB-8).

##### ~~4.6.8.1 Intent.~~

##### **4.6.8.1 Purpose and intent.**

The highway business district ~~is established to provide goods and services which complement primary retail trade operations in the town. Because of the objectives and characteristics of this district, it should be located contiguous to major streets or within proximity to primary commercial districts. The intent of the district is to provide~~ **provides** orderly growth along the town's major thoroughfares; promotes **s** access management and traffic safety for all modes of transportation, encourages **s** the redevelopment of existing commercial sites; creates **s** economic opportunities ~~for general retail, restaurants, professional services, banks, automotive sales and service, and other uses which expand the town's economic base; promote;~~ **promotes** a safe, convenient and attractive environment for pedestrians to access ~~stores; create~~ **good and services; creates** gateways and entrances into the town along central corridors; and encourages **s** residential development that blends with the commercial character of the district and enhances the variety of housing options provided in the town. **Because of the objectives and characteristics of this district, it is located contiguous to major streets or within proximity to primary commercial districts.**

##### ~~4.6.8.2 Uses.~~

~~The chart below indicates the uses generally permitted in the HB-8 zoning district.~~

~~[TABLE]~~

~~**Exclusions:** Correctional institutions and all uses not specifically enumerated.~~

##### ~~4.6.8.3 Dimensional requirements (HB-8).~~

~~[TABLE]~~

~~\*A density bonus may be available for developments that include affordable housing units in accordance with.~~

~~4.6.8.4~~ **4.7.8.2** *Supplementary district requirements (HB-8).*

...

C. For areas along U.S. 70, additional development requirements may apply. **See Section 4.7.7.**

~~4.6.9.~~ **4.7.9** - Light industrial district (LI-8).~~4.6.9.1~~ *Intent.***4.7.9.1 Purpose and intent.**

The light industrial district ~~is intended to provide~~**includes** areas in which the principal use of the land is for light manufacturing, materials processing, warehousing, and retail operations incidental thereto;  
~~promote. The district promotes~~ moderate-sized, clean industries which provide jobs and career opportunities within the community; permits uses that are conducted so that noise, odor, dust and glare of each operation is completely confined within an enclosed building, insofar as is practical; encourages entrepreneurship and small business development; allows limited residential uses which do not conflict with the ability of industrial enterprises to conduct their businesses within the district area; ~~allowand~~  
**allows** community facilities and convenience trade establishments which provide needed services to industrial development.

~~4.6.9.2~~ ~~Uses.~~

~~The chart below indicates the uses generally permitted in the light industrial zoning district.~~  
~~[TABLE]~~

~~**Exclusions:** All uses not specifically enumerated~~

~~4.6.9.3~~ *Dimensional requirements (LI-8).*~~[TABLE]~~~~4.6.9.4~~ **4.7.9.3** *Supplementary district requirements (LI-8).*

A. Documentation of permits required. **Applications for a zoning permit for** industrial, fabrication or manufacturing uses must ~~provide~~**include** documentation of applicable state and federal permits ~~to the town~~, including documentation of regulatory compliance for handling and storage of hazardous materials, use of ammonia or other chemicals for heating, cooling or other mechanical operations as appropriate, and the type and maximum amount of any hazardous materials that will be stored on site at any given time.

~~B. Industries must comply with town regulations regarding stormwater or provide documentation of any NPDES permits already provided through the state.~~

~~G. B. Town shall be provided~~**Applications for zoning permits must include** copies of NCDOT driveway permit applications for concurrence review. . . .

~~D. C.~~ Operations on site, . . . .

~~4.6.10~~ **4.7.10** - Heavy industrial district (HI-0).~~4.6.10.1~~ *Intent.***4.7.10.1 Purpose and intent.**

...

~~4.6.10.2 Uses.~~

~~The chart below indicates the uses generally permitted in the HI-0 zoning district.  
[TABLE]~~

~~**Exclusions:** New residential development, all uses not specifically enumerated~~

~~4.6.10.3 Dimensional requirements (HI-0).  
[TABLE]~~

~~4.6.10.4~~ **4.7.10.2 Supplementary district requirements (HI-0).**

...

~~B. Industries must comply with town regulations regarding stormwater or provide documentation of any NPDES permits already provided through the state.~~

~~G. B. Applications for zoning permits must include~~ Town shall be provided copies of NCDOT driveway permit applications for concurrence review. Traffic management and access shall be designed to maximize safety and to channel truck traffic onto major state roads with as little secondary or town road exposure as possible. A traffic impact analysis may be required in accordance with the town driveway permit requirements when accessing town roads.

~~4.6.11~~ **4.7.11** - TND traditional neighborhood development (master planned).

~~4.6.11.1 Intent~~

~~4.7.11.1 Purpose and Intent.~~

...

~~4.6.11.2~~ **4.7.11.2 Master plan required.**

...

E. Approval process:

...

5. Before approving a master plan and subsequent rezoning, the ~~alderment~~ **town council** shall first hold a public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date ~~fixed~~ scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of hearing.

...

~~4.6.11.3~~ **4.7.11.3 Development Parameters**

~~4.6.11.4~~ **4.7.11.4 Uses**

...

**B. ConditionalSpecial** uses:

~~4.6.11.5~~ **4.7.11.5** *Design standards.*

D. streets, alleys and pathways.

1. **Public streets shall provide access to all lots.** . . .

~~2. Public or private streets shall provide access to all tracts and lots and shall be in compliance with the requirements as indicated in the Town of Black Mountain standards and details Manual current North Carolina Fire Code including appendix D.~~

~~3. 2. Streets and alleys shall, wherever practical, terminate at other streets within the neighborhood and connect to existing and projected streets outside the development. Cul-de-sac and dead-end streets are discouraged and should only occur where absolutely necessary due to natural conditions. and shall be in compliance with the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

...

~~4.6.12~~ **4.7.12** - ICD institutional campus development (master planned).

~~4.6.12.1~~ **Intent**

**4.7.12.1 Purpose and Intent.**

...

~~4.6.12.2~~ **4.7.12.2** *Uses.*

...

**B. ConditionalSpecial** uses.

...

~~4.6.12.3~~ **4.7.12.3** *General requirements.*

...

H. Existing structures. When a property is rezoned to institutional campus development (ICD), existing structures on the property shall not be subject to the buffering or sign requirements of this **ordinanceChapter**. Expansion of or changes to existing structures shall conform to all provisions of the ICD, except where impractical due to safety considerations or the Americans with Disabilities Act. When an existing structure is located within a buffer area, any changes to the structure shall be made so as to minimize the impact on the side(s) of the structure nearest to the property line.

...

K. Street design standard. All campuses or institutions shall have two points of connection to a town maintained street. If the street accessing the campus or institution shall be private, the street shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.

However, such streets may, at the discretion of the planning staff in consultation with public works staff ~~and the fire inspector~~, be allowed to remain unpaved with use of an approved surface treatment (gravel or other).

L. Requirements concerning sidewalks and greenways.

1. Sidewalks or greenway easements shall be provided in locations shown on the adopted comprehensive pedestrian master plan. A fee-in-lieu of construction or dedication of easement may be provided to the town at an equivalent cost to construction upon approval of the town ~~planning board~~ **council**.

~~4.6.12.4~~ **4.7.12.4** *Plan review procedure and required steps.*

A. Meeting with ~~building~~, ~~planning~~, and ~~zoning~~ **development** staff. Developer shall be required to meet with ~~building~~, ~~planning~~, and ~~zoning~~ **development** staff for technical review prior to submitting a concept plan of the proposed development. The purpose of this meeting will be to acquaint the developer with the entire planning and developmental process for an ICD development.

...

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

...

G. Changes to the master plan. If the project represents a substantial change from the approved master plan, a new master plan must be submitted for planning board and the ~~board of aldermentown council~~ approval. A "substantial change" means a change that, in the opinion of the ~~building~~, ~~planning~~, and ~~zoning~~ **development** staff, . . . :

...

~~4.6.12.5~~ **4.7.12.5** *Supplementary district regulations.*

A. All permitted uses ~~and conditional~~ and special uses in this district are subject to approval of installation and materials by the public works director as designated, of curbs, gutters, storm drainage structures, sidewalks, entrances and exits, street paving, water and sewer facilities, and garbage collection procedures.

...

**4.7.13 – Uses.**

**4.7.13.1 – Generally.**

A. **Uses, for purposes of this chapter, are divided into three types: principal uses, accessory uses, and temporary uses.**



**B.** Uses, whether principal or accessory, are permitted by right, permitted with additional requirements, permitted upon issuance of a special use permit, or prohibited in each zoning district as listed in the permitted use table found in Section 4.6.15. Uses in the table are grouped into categories based on common function, product or physical characteristics. Use categories provide a systematic basis for assigning principal uses to appropriate zoning districts.

**C.** Special use permits are required for certain uses to ensure the goals of the comprehensive plan or other adopted plans are considered and to minimize negative impacts on neighboring properties. Special use permits are issued by the board of adjustment which shall hear and consider requests in accordance with guidelines set forth in Chapter 7 of this code.

#### **4.7.13.2 – Uses not specifically listed.**

A use that is defined in Chapter 1 of this Land Use Code, but not listed in the permitted uses table, is prohibited. A proposed use that is not defined in Chapter 1 and not listed in the permitted uses table shall be allowed or prohibited in the same manner as that use appearing in the permitted uses table which is most similar to the proposed use based upon the type and amount of activity, the likely impact on surrounding property, and the conditions of the site upon which the use will take place, as determined by the zoning administrator. The zoning permit issued for the proposed use shall state the proposed use, the next most similar use as determined by the zoning administrator, and the reasons for so categorizing the proposed use.

#### **4.7.13.3 – Temporary uses.**

**A.** Purpose. This section is intended to permit certain temporary uses of property while ensuring public safety, health and welfare.

**A.B.** Requirements- for storage units or “PODS”.

**1.** This section applies to temporary, self-contained storage units, not including trailers for office use or temporary shelter, which are intended to be picked up and moved to various locations on demand.

**2.** The maximum time a temporary storage unit shall be placed on a parcel is 120 days.

**3.** PODS shall be placed so as not to interfere with traffic or as to create a traffic hazard.

**C.** Requirements for outdoor religious meetings.

**1.** Religious meetings in a tent or other temporary structure shall not exceed a period of 60 days, unless approved by the zoning administrator related to on-going construction.

**D.** Requirements for open lot sales.

**1.** Temporary open lot retail sales shall be permitted in all industrial or commercial districts only.

**2.** Such use shall not exceed a 60-day period.

#### ~~4.6.13—Dimensional Table Requirements.~~

##### ~~Table of Uses for Zoning Districts~~

~~{TABLE}~~

#### ~~4.6.14~~ **4.7.14** Table of uses by zoning district.

##### ~~Dimensional Requirements by Zoning District~~

~~{TABLE}~~

#### **Table of Uses for Zoning Districts**

| Category             | Uses                                                   | CR<br>-1 | SR<br>-2 | TR<br>-4 | UR<br>-8 | NM<br>U-8 | OI<br>-6 | CB<br>D | HB<br>-8 | LI-<br>8 | HI<br>-0 |
|----------------------|--------------------------------------------------------|----------|----------|----------|----------|-----------|----------|---------|----------|----------|----------|
| Special Uses         | Conservation Subdivision                               | S        | S        | S        | S        | S         | S        | S       |          |          |          |
| Special Uses         | Cottage Housing Development<br>(CHD)                   | S        | S        | S        | S        | S         | S        | S       | S        |          |          |
| Special Uses         | Industrial Park Development                            |          |          |          |          |           |          |         | S        | S        | S        |
| Special Uses         | Planned Unit Development<br>(PUD) - Commercial         |          |          |          |          | S         | S        | S       | S        | S        | S        |
| Special Uses         | Planned Unit Development<br>(PUD) - Residential        | S        | S        | S        | S        | S         | S        | S       | S        | S        |          |
| Residential          | Manufactured Home Parks                                |          |          | S        | S        |           |          |         | S        | S-       |          |
| Residential          | Manufactured Homes on<br>individual lots               | A        | A        | A        | A        |           |          |         |          |          |          |
| Residential          | Multi-family residential                               | S        | S        | S        | S        | S         | S        | S       | S        | S        |          |
| Residential          | Secondary Dwellings                                    | A        | A        | A        | A        | A         |          |         |          |          |          |
| Residential          | Shared housing/Community<br>living facilities          |          |          |          | P        | P         | P        |         | P        | P        | P        |
| Residential          | Single-Family Residences                               | P        | P        | P        | P        | P         | P        | P       | P        |          |          |
| Residential          | Two-family Residences<br>(duplex)                      | P        | P        | P        | P        | P         | P        | P       | P        |          |          |
| Public/Institutional | Government facilities                                  | P        | P        | P        | P        | P         | P        | P       | P        | P        | P        |
| Public/Institutional | Group home                                             |          |          |          |          | P         | P        |         | P        | P        | P        |
| Public/Institutional | Hospitals                                              |          |          |          |          |           |          |         | P        | P        | P        |
| Public/Institutional | Meeting halls for civic, social,<br>and fraternal uses |          |          |          |          |           |          | P       | P        | P        | P        |

[illegible]

|            |                                              |   |   |   |   |   |   |   |   |   |   |
|------------|----------------------------------------------|---|---|---|---|---|---|---|---|---|---|
| Industrial | Crematories                                  |   |   |   |   |   |   |   |   | - | P |
| Industrial | Distribution                                 |   |   |   |   |   |   |   |   | P | P |
| Industrial | Freight handling facilities                  |   |   |   |   |   |   |   | P | P | P |
| Industrial | Junkyards and salvage yards                  |   |   |   |   |   |   |   |   |   | S |
| Industrial | Manufacturing                                |   |   |   |   |   |   |   |   |   | P |
| Industrial | Manufacturing, light (indoor)                |   |   |   |   |   |   |   | P | P | P |
| Industrial | Recycling sorting, processing,<br>or storage |   |   |   |   |   |   |   |   | P | P |
| Industrial | Warehousing                                  |   |   |   |   |   |   |   | P | P | P |
| Industrial | Wood and Yard Waste Facility                 |   |   |   |   |   |   |   |   | - | P |
| Commercial | Adult Establishments                         |   |   |   |   |   |   |   | S |   |   |
| Commercial | Agriculture                                  | A | A | A | A | A | A |   | A |   |   |
| Commercial | Amusements and entertainment<br>uses         |   |   |   |   |   |   |   | P | P | P |
| Commercial | Animal services                              |   |   |   |   |   |   | P | P | P | P |
| Commercial | Art studio and galleries                     |   |   |   |   | P | P | P | P | P | P |
| Commercial | Automotive sales, rental and<br>service      |   |   |   |   |   |   | - | P | P | P |
| Commercial | Bank and financial services                  |   |   |   |   |   |   | P | P | P | P |
| Commercial | Bar                                          |   |   |   |   |   | P | P | P | P | P |
| Commercial | Bed and Breakfast Homes                      | P | P | P | P | P | P | P | P |   |   |
| Commercial | Bed and Breakfast Inns                       | A | A | A | A | A | A | A | A |   |   |
| Commercial | Building material sales                      |   |   |   |   |   |   |   | P | P | P |
| Commercial | Business services                            |   |   |   |   |   |   | P | P | P | P |



|                                                            |                                                         |                          |  |  |  |   |     |                 |   |   |   |
|------------------------------------------------------------|---------------------------------------------------------|--------------------------|--|--|--|---|-----|-----------------|---|---|---|
| Commercial                                                 | Mixed use buildings                                     |                          |  |  |  |   |     | P               | P | P | P |
| Commercial                                                 | Neighborhood Fueling Facility                           |                          |  |  |  | A | A   |                 |   |   |   |
| Commercial                                                 | Professional offices and services                       |                          |  |  |  | P | P   | P               | P | P | P |
| Commercial                                                 | Restaurant (sit down)                                   |                          |  |  |  | P |     |                 | P | P | P |
| Commercial                                                 | Restaurant brew pub/tavern                              |                          |  |  |  |   | P - | P               | P | P | P |
| Commercial                                                 | Restaurants and taverns (walk-up, drive-thru, sit down) |                          |  |  |  |   | P   | P               | P | P | P |
| Commercial                                                 | Retail                                                  |                          |  |  |  |   |     | P               | P | P | P |
| Commercial                                                 | Retail (Up to 2,500 sf)                                 |                          |  |  |  | - | P   |                 | P | P | P |
| Commercial                                                 | Taxi and Transportation Services                        |                          |  |  |  | P | P   | P               | P | P | P |
| Commercial                                                 | Warehousing (accessory to retail)                       |                          |  |  |  |   |     | P               | P | P | P |
| Commercial                                                 | Wholesale                                               |                          |  |  |  |   |     |                 | P | P | P |
| Commercial                                                 | Wholesale and retail bakery                             |                          |  |  |  |   |     | P               | P | P | P |
|                                                            |                                                         | P = Permitted by Right   |  |  |  |   |     | S = Special Use |   |   |   |
| ** See Land Use Code Section 1.2.3 for definitions of uses |                                                         | A = Additional Standards |  |  |  |   |     |                 |   |   |   |

**4.7.15 Dimensional requirements** by zoning district.

## Dimensional Requirements by Zoning District

| Zoning District* | Use | Density and Lot Size |                  |                  | Minimum Yard Requirements |                    |                    | Max. Height            |
|------------------|-----|----------------------|------------------|------------------|---------------------------|--------------------|--------------------|------------------------|
|                  |     | Min. Lot Size/       | Min. Width (ft.) | Min. Depth (ft.) | Front Setback (ft.)       | Side Setback (ft.) | Rear Setback (ft.) | Structure Height (ft.) |

|       |                      | Max.<br>Density    |                        |      |                             |                              |                                               |    |
|-------|----------------------|--------------------|------------------------|------|-----------------------------|------------------------------|-----------------------------------------------|----|
| CR-1  | All Uses             | 1 acre, 1<br>DUA   | 80, 15<br>at<br>street | 100  | 30, 25<br>steep<br>hillside | 10                           | 30**                                          | 35 |
| SR-2  | All Uses             | ½ acre,<br>2 DUA   | 60, 15<br>at<br>street | 100  | 30, 25<br>steep<br>hillside | 10                           | 30                                            | 35 |
| TR-4  | All Uses             | ¼ acre,<br>4 DUA   | 40, 15<br>at<br>street | 80   | 20, 15<br>steep<br>hillside | 10                           | 15                                            | 35 |
| UR-8  | Major<br>Subdivision | 1/8 acre,<br>8 DUA | 15                     | None | 20, 15<br>steep<br>hillside | 10                           | 15                                            | 35 |
|       | Other<br>Residential | 5,000<br>sq. ft.   | 15                     | None | 20, 15<br>steep<br>hillside | 10                           | 15                                            | 35 |
|       | Non-<br>Residential  | 1/8 acre           | 40, 15<br>at<br>street | None | 20, 15<br>steep<br>hillside | 10                           | 15                                            | 35 |
| OI-6  | Residential          | 1/6 acre,<br>6 DUA | 60                     | 100  | 30                          | 10                           | 20                                            | 35 |
|       | Non-<br>Residential  | 1/6 acre           | 100                    | 100  | 40                          | 30                           | 30, 40<br>abutting<br>residential<br>district | 35 |
| NMU-8 | Residential          | 1/8 acre,<br>8 DUA | 50                     | 100  | 25                          | 10                           | 10                                            | 35 |
|       | Non-<br>Residential  | 1/6 acre           | 75                     | 100  | 25                          | 20                           | 10, 20<br>abutting<br>residential<br>district | 35 |
| CBD   | All Uses             | None               | None                   | None | 12 from<br>curb             | none,<br>comply<br>with fire | none,<br>comply<br>with fire                  | 40 |



|                                                                              |                     |                    |        |      |                                                                                                       |                                               |                                               |    |
|------------------------------------------------------------------------------|---------------------|--------------------|--------|------|-------------------------------------------------------------------------------------------------------|-----------------------------------------------|-----------------------------------------------|----|
|                                                                              |                     |                    |        |      |                                                                                                       | and<br>building<br>code                       | and<br>building<br>code                       |    |
| HB-8                                                                         | Residential         | 1/8 acre,<br>8 DUA | 50 ft. | None | 15                                                                                                    | 10                                            | 30                                            | 40 |
|                                                                              | Non-<br>Residential | None               | 50     | None | 15                                                                                                    | 10, 20<br>abutting<br>residential<br>district | 20, 30<br>abutting<br>residential<br>district | 40 |
| LI-8                                                                         | Residential         | 1/8 acre,<br>8 DUA | 50 ft. | None | 15                                                                                                    | 10                                            | 30                                            | 55 |
|                                                                              | Non-<br>Residential | None               | None   | None | 0 on<br>private<br>street, 30<br>on public<br>street, 50<br>across<br>from<br>residential<br>district | 10, 20<br>abutting<br>residential<br>district | 20, 30<br>abutting<br>residential<br>district | 55 |
| HI-0                                                                         | All Uses            | None               | None   | None | 15                                                                                                    | 10, 20<br>abutting<br>residential<br>district | 20, 30<br>abutting<br>residential<br>district | 48 |
| *See Land Use Code Section 5 for requirements related to secondary dwellings |                     |                    |        |      |                                                                                                       |                                               |                                               |    |

**Section 44.** Section 4.7 of Chapter 4 of the Land Use Code is renumbered as section 4.8. The following subsections are deleted:

4.7.1.4 “Establishment and delineation of wellhead protection district,”

4.7.1.5 “District boundary disputes,”

4.7.3.2 “Historic District and landmark establishment,”

4.7.3.4 “Designation of conservation district,”

4.7.3.5 “Designation of Landmarks,”

4.7.3.6 Jurisdiction of the historic preservation commission,”

4.7.3.7 “Rules of procedure, design guidelines and meetings,”

4.7.3.8 “Powers and duties,”

4.7.3.10 “Application for certificate of appropriateness,”

4.7.3.11 “Criteria to determine appropriateness,”

4.7.3.10 “Demolition,”

4.7.3.14 “Hearing procedures,”

4.7.3.15 "Major and minor works,"

4.7.3.16 "Certificate issuance; expiration; enforcement,"

4.7.3.17 "Conditions for certain approvals,"

4.7.3.18 "Historic district review required,"

4.7.5.6 "Legal Description,"

4.7.5.7 "Repeal of previous fire district regulations,"

4.7.6.5 "Appeals and variances,"

And the remaining portions of Section 4.7, now Section 4.8 are revised to read as follows:

SECTION ~~4.7.4.8~~ 4.8 - OVERLAY DISTRICTS

~~4.7.4~~ 4.8.1 - Wellhead protection overlay.

~~4.7.4.1~~ 4.8.1.1 *Purpose and intent.*

~~The purpose of the~~ The wellhead protection overlay district ~~is to:~~

~~To promote~~ promotes the health, safety and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions and businesses of the Town of Black Mountain; **preserves and protects the public, municipal water supply for the Town of Black Mountain; conserves the natural resources of the town; and prevents temporary and permanent contamination of the environment.**

~~To preserve and protect the public, municipal water supply for the Town of Black Mountain;~~

~~To conserve the natural resources of the town; and~~

~~To prevent temporary and permanent contamination of the environment.~~

~~4.7.1.2~~ 4.8.1.2. *Location.*

The wellhead protection overlay district consists of aquifers or recharge areas which are delineated on a map entitled "Wellhead Protection Districts, Town of Black Mountain," dated 8-9-99, as the same may be amended from time to time. This map is hereby made a part of the town zoning regulations and is on file in the office of the zoning administrator.

~~4.7.1.3~~ 4.8.1.3 *District boundary disputes.*

A. If the location of the district boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a special permit application to the Board of adjustment. Any application for a special permit for this purpose shall be accompanied by adequate documentation.

B. The burden of proof shall be upon the owner(s) of the land in question to show where the bounds should properly be located. At the request of the owner(s), the town may engage a professional engineer (civil or sanitary), hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the district with respect to individual parcels of land, and may charge the owner for all or part of the cost of the investigation.

~~4.7.1.6~~ 4.8.1.6 *Use regulations.*

A. Permitted uses. The permitted uses, bulk and yard requirements within the wellhead protection overlay shall be those of the underlying zoning district. ~~Site plans submitted for permitted and~~

~~conditional uses shall include additional details as outlined in 4.7.1.7 of this section, except as modified in subsection (B).~~

**B. ~~Prohibited uses.~~Special Use Permit Required.** The following uses and structures which pose known groundwater contamination threats are ~~specifically prohibited, except in accordance with 4.~~**permitted only upon issuance of a special use permit pursuant to the requirements of Section 7.12:**

1. Use or production of hazardous substances in industrial, processing, manufacturing or commercial operations;

2. Any waste treatment or disposal activity requiring a permit under any of the following state regulations:

• ~~15A NCAC 13B, Solid Waste Management Permits, primarily landfills;~~

• ~~15A NCAC 13A, Hazardous Waste Management Permits;~~

• ~~15A NCAC 1E, Construction and Operation of an Oil Refining Facility;~~

• ~~15A NCAC 5B, Mining Permit;~~

• ~~15A NCAC 5D, Permit to Drill Exploratory Oil or Gas Well;~~

• ~~15A NCAC 2H, Pretreatment Permit; and~~

• ~~15A NCAC 2H.0202, Waste Not Discharged to Surface Waters, including waste lagoons, spray and infiltration systems, and the land application and subsurface disposal of wastes, but excluding sewer system extension lines.~~

a. **15A NCAC 1E, Oil Refining Facility Permits;**

b. **15A NCAC 2H.0100, Point Source Discharges to Surface Waters;**

c. **15A NCAC 2H.0202, Waste Not Discharged to Surface Waters, including waste lagoons, spray and infiltration systems, and the land application and subsurface disposal of wastes, but excluding sewer system extension lines.**

d. **15A NCAC 5B, Mining: Mineral Resources;**

e. **15A NCAC 5D, Oil and Gas Conservation;**

f. **15A NCAC 13A, Hazardous Waste Management Permits;**

g. **15A NCAC 13B, Solid Waste Management Permits, primarily landfills;**

...

**C.** Use list not exhaustive. The uses prohibited ~~by this district~~**pursuant to subsection (B)** represent ~~the state commonly occurring uses that pose known risks of present knowledge and most common description~~**contamination to groundwater. If a proposed use is known to pose similar risks of said uses. As other polluting uses are discovered, or other terms of description become necessary, these shall be added to the list of uses prohibited by this district.**~~groundwater contamination~~

...

**E.** Limited exemptions. The following activities or uses are exempt from the provisions of this ~~ordinance:~~**section:**

...

~~F. Requirements for existing prohibited uses. All uses and structures specifically prohibited in subsection 4.1.7.6(B) may continue beyond the effective date of this ordinance only if, within 90 days after the effective date of this ordinance, the mayor and board of aldermen approve an operating and monitoring plan for each prohibited use or structure.~~

~~4.7.1.7~~ **4.8.1.7** *Plan submission and approval.*

...

4. Reporting schedule.

**b. No annual report is required for septic tanks or impervious surfaces located within wellhead protection overlay districts.** These uses will be allowed to continue indefinitely, although no future expansion will be allowed, provided that the other requirements of this section are met.

...

**6. Other requirements.** . . . . ~~No annual report is required for septic tanks or impervious surfaces located within wellhead protection overlay districts.~~

...

~~4.7.2~~ **4.8.2** - Flood damage prevention overlay (flood insurance rate maps).

This overlay district is established to prevent hazards within the floodplain as designated on the flood insurance rate maps (FIRM) ~~as the same may be amended from time to time, which are hereby adopted by reference and incorporated herein.~~ Regulations for this district are found in chapter 2.3 of this LUC.

~~Regulations for this district are found in as part of the town's building regulations.~~

~~4.7.3~~ **4.8.3**- Historic district and historic district overlay.

~~4.7.3.1~~ **Intent**

**4.8.3.1 Purpose and Intent.**

...

~~4.7.3.3~~ **4.8.3.2 Designation of historic districts.**

**All locally designated Historic Districts and Historic Landmarks shall be a part of the Historic Overlay District.** The ~~board of aldermen~~ **town council** may adopt, amend, reject or repeal ordinances designating historic districts when adoption or amendment is pursuant to the following procedure:

...

D. The ~~board of aldermen~~ **town council** shall designate the boundaries of an historic district in accordance with the procedures set forth in the town code of ordinances, amendments of the Black Mountain Zoning Ordinance and ~~G.S. 160A-384~~ N.C.G.S. **§§ 160D-601 and 160D-944.**

~~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.~~

~~4.7.3.9~~ **4.8.3.4** *Certificates of appropriateness required.*

~~A. From and after the designation of a landmark or an historic district, no~~ No exterior portion of any building or ~~other~~ structure **in the historic district** (including masonry, walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished ~~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~~ **purpose and intent for which this ordinance-district is established.** 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. Application for and consideration of certificates of appropriateness shall be made pursuant to the requirements of Section 1.8 of this Land Use Code.**

~~B. C.~~ For purposes of ~~this ordinance~~ **the application for and issuance of a certificate of appropriateness**, "exterior features" shall include . . . .

**D. Jurisdiction of the commission over interior spaces is limited to specific interior features of architectural, artistic, or historical significance in publicly owned landmarks and of privately owned historic landmarks for which consent for interior review has been given by the owner.**

~~C. E.~~ The State of North Carolina (including its agencies, political subdivisions and instrumentalities), the Town of Black Mountain and all public utility companies shall be required to obtain a certificate of appropriateness ~~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;~~ **provided, however, that no certificate of appropriateness shall be required for ordinary maintenance or repair, including the following:**

~~D. Examples of specific items which fall under ordinary maintenance or repair that will not require a certificate of appropriateness are:~~

**5. Addition or deletion of fire hydrants;**

9. Replacement of existing overhead lines, poles or ground-mounted installation.

...

~~4.7.3.13~~ **4.8.2.5** *Land use, interior arrangement, maintenance, emergency repairs not considered.*

**A. Regulations governing the historic district overlay** ~~Nothing herein~~ shall **not** be construed to prevent a property owner from making any **lawful** 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.~~ **B.** The ordinary maintenance or repair of any exterior architectural feature of a landmark, or in the historic district (HD) which does not involve a change in design, material, or outer appearance thereof, shall not be prevented **ed** by the requirements pertaining to the designated landmark or historic district.

~~F.~~ **C.** Nothing in this article . . . .

~~G.~~ **D.** The construction, . . . .

~~4.7.5~~ **4.8.5** - Fire district overlay.

~~4.7.5.1~~ **4.8.5.1** *Statutory authorization and enactment.*

~~Pursuant to~~ **In accordance with** the ~~authority conferred by requirements of N.C.G.S. 160A-435, § 160D-1128(B), the board~~ **Town of aldermen do Black Mountain** hereby ~~ordain and enact in to law this chapter establishing~~ **establishes** a primary fire district.

**A. Primary fire district defined.** The primary fire district shall be as defined within the legal description set forth herein below. In addition, a map of the affected property, based upon the aforementioned legal description, is available for inspection in the office of the town clerk in the Black Mountain Town Hall and in the Black Mountain Planning and Development Department.

**B.** For the purposes of this section, the primary fire district shall be described as follows. Primary fire district. Beginning at the intersection of the centerlines of East State Street and Richardson

Boulevard; thence running southeasterly along the centerline of Richardson Boulevard to a point where it intersects with the centerline of Sutton Avenue; thence west along the centerline of Sutton Avenue to the intersection of the centerlines of Sutton Avenue and N.C. Highway 9; continuing west along the centerline of Sutton Avenue which becomes the centerline of South Dougherty Street; thence northwest along the centerline of South Dougherty Street to the intersection of the centerline of West State Street; thence northeast along the centerline of West State Street to the intersection of the centerline of Church Street; thence north along the centerline of Church Street to a point in the centerline of Church Street which is an extension of the southern boundary of the property identified as Parcel ID# 0619.10-26-8198.000 described in Deed Book 1744 at Page 0699 in the Office of the Register of Deeds for Buncombe County, thence east to the southwest corner of said property; thence east with the southern boundary of said property to the southeast corner of said property; thence north with the eastern boundary of said property to the southeast corner of the property identified as Parcel ID# 0619.10-26-8273 described in Deed Book 1384 at Page 0331 in the Office of the Register of Deeds for Buncombe County, thence north with the eastern boundary of said property to the southeast corner of the property identified as Parcel ID# 0619.10-26-8219.000 described in Deed Book 1798 at Page 0360 in the Office of the Register of Deeds for Buncombe County, thence north with the eastern boundary of said property to the southwestern corner of the property identified as Parcel ID# 0619.10-26-9410.000 described in Deed Book 1788 at Page 0714 in the Office of the Register of Deeds for Buncombe County, thence east with the southern boundary of said property to the southeastern corner of said property; thence east to a point which is the intersection of the extension of the southern boundary of said property with the centerline of Montreat Road; thence south along the centerline of Montreat Road to a point where it intersects with the centerline of East State Street; thence east along the centerline of East State Street to its intersection with the centerline of Richardson Boulevard which is the point and place of beginning.

#### ~~4.7.5.2~~ **4.8.5.2 Purpose and intent.**

This **primary fire district** overlay ~~establishes~~ **is established to provide** standards for the construction,  
...

#### ~~4.7.5.4~~ **4.8.5.4 Application Permit required.**

~~Application for any~~ **No** activity regulated by the provisions of this section shall ~~be made to the office of~~ **commence until such time as a permit is issued by** the building inspector ~~for the Town of Black Mountain prior to the commencement of any work associated with the proposed project.~~

#### ~~4.7.5.5~~ **4.8.5.5 Primary fire district regulations.**

~~In accordance with the requirements of G.S. 160A-435, the Town of Black Mountain hereby establishes a primary fire district.~~

~~A. Primary fire district defined. The primary fire district shall be as defined within the legal description set forth herein below. In addition, a map of the affected property, based upon the aforementioned legal description, is available for inspection in the office of the town clerk in the Black Mountain Town Hall and in the Black Mountain Planning and Zoning Department.~~

~~B.~~ **A.** Enforcement of building and fire codes. All buildings and structures erected, repaired, altered, or moved within or into the primary fire district shall comply with the provisions of the North Carolina edition of the **2000 most current** International Building and Fire Code, as currently enforced within the State of North Carolina and duly adopted and enforced within the Town of Black Mountain.

~~C.~~ **B.** Wood or frame structures allowed. In accordance with G.S. ~~160-436, 160D-1128(C)~~, no wood or frame building or structure may be erected, repaired or altered, or moved into or within the limits of the primary fire district except in accordance with the procedure set forth below.



3. Following receipt of written comments from the fire inspector, the building inspector shall ~~review the application and then~~ approve or deny said application. If the application is approved, it ~~is~~ shall be transmitted to the ~~board of aldermen~~ town council for review. If the building inspector denies the issuance of a permit ~~requested in accordance with these guidelines, he shall set forth~~, the reasons for ~~such~~ denial ~~of said permit shall be set forth~~ in writing, a copy of which shall be transmitted to the applicant ~~so that the applicant may appeal the decision of the building inspector in accordance with the guidelines set forth below.~~

~~Once approved by the building inspector, the application is transferred to the Black Mountain Board of Aldermen for review and consideration of approval or denial.~~

4. If the ~~board of aldermen~~ town council approves the application, it ~~is~~ shall be then forwarded to the office of the insurance commissioner for the State of North Carolina for review. If the ~~board of aldermen~~ town council denies the issuance of a permit ~~requested in accordance with these guidelines, they, the council~~ shall instruct the town clerk to prepare, for the signature of the mayor, an order specifying the reasons for their denial ~~of the request~~. A copy of the order of denial shall be forwarded to the applicant. Upon notification of denial, the applicant may appeal the decision of the ~~board of aldermen~~ town council in accordance with the ~~guidelines~~ regulations set forth below.

5. Once both the building inspector and the ~~board of aldermen~~ town council have approved the application locally, said application is forwarded to the North Carolina Commissioner of Insurance (or designee) for review. ~~The appeal from an adverse decision of the office of the commissioner of insurance may be taken to the appropriate court of jurisdiction.~~

**D. C.** Appeals procedure. Appeals from any adverse decision made on the part of either the building inspector or the ~~board of aldermen~~ town council with regard to the enforcement of the primary fire district regulations may be taken to the commissioner of insurance (or designee). Said appeal may be made by filing a written notice concurrently with the office of the commissioner of insurance for the State of North Carolina and with the Town of Black Mountain Building Inspector within a period of ten days following the issuance of any order, decision, or determination. ~~Further appeals may be taken to the building code council or to the appropriate court of jurisdiction, as provided by law.~~

#### ~~4.7.6~~ **4.8.6** - Pedestrian master plan overlay.

##### ~~4.7.6.1~~ **4.8.6.1** — Intent.

##### **4.8.6.1 Purpose and intent.**

~~The intent of~~ The pedestrian master plan overlay district is **established** to : fulfill the comprehensive plan goal of making Black Mountain "one of the most walkable communities in the region;" implement the adopted pedestrian master plan; provide safe and convenient pedestrian and wheelchair access throughout town and in particular to connect residential areas with commercial and employment areas; **promote inter-modal transportation and support transit; and maintain the small-town feel and traditional character of the town.**

~~• Promote inter-modal transportation and support transit; and~~

~~• Maintain the small-town feel and traditional character of the town.~~

##### ~~4.7.6.3~~ **4.8.6.3** Regulations.

**A.** Sidewalks are required for all **development projects which fall in the following categories:**

**1. Construction of new construction and renovations, additions and/or expansions to existing commercial, office, institutional, and mixed-use structures which that abut existing or proposed public roadways;**

~~1. Any project adjacent to sidewalk alignments as adopted in the pedestrian master plan.~~

**2. Renovation or which fall into one of the following categories: expansion of any existing commercial, office, or institutional structure that abuts a public roadway where the renovation or expansion results in an increase of more than 50 percent of the value of the structure;**

**3. All new single-family residential development which is a major subdivisions of ten or more single-family homes;**

**4. All new multi-family residential development or residential special use developments, subdivisions of ten units or more or as required by the;**

~~4. All new office, institutional, and commercial or mixed-use developments abutting a state or town road or as required as part of a special use permit;~~

**5. All new development pursuant to a special use permit;**

~~5. All existing office, institutional, and commercial development additions or expansions to structures where the expansion results in an increase of more than 50 percent value of the structure;~~

**6. All new streets, improved streets or extension to of streets as required by the town subdivision ordinances, or the special use permit.**

**7. As a requirement of the district in which the project is located.**

...

**C. Notwithstanding the conditions of a special ~~use or conditional~~ use permit, a developer may choose to request a waiver for construction of sidewalk and pay a fee in lieu of actual construction as long as the following conditions are met:**

**1. The applicable project area, including the street frontage, is not identified as a needed pedestrian linkage within the pedestrian plan or other adopted transportation or corridor plan, including but not limited to the transportation improvement program (TIP), or greenway master plan, or are granted approval for a waiver by the ~~planning board~~ town council.**

**2. To grant a waiver for sidewalk construction, the ~~planning board~~ town council must find that:**

...

~~4.7.6.4~~ **4.8.6.4 Use of fees collected in lieu of construction.**

All fees collected by the town pursuant to these provisions shall be accounted for separately from other monies, and shall be expended only for the construction or rehabilitation of sidewalks or other pedestrian improvements in the same general area as the development is located as determined by the town ~~planning board~~ council at the time of the request.

~~4.7.7~~ **4.8.7 - US70 corridor overlay.**

**4.7.7.1 Intent**

**4.8.7.1 Purpose and intent.**

~~The intent of the US70 corridor overlay is to:~~

~~\*Beautify the US70 corridor~~ **US Highway 70 serves** as ~~athe~~ primary entrance, or "gateway," and thoroughfare through town. ~~in accordance with the 2004 comprehensive plan;~~ **The US70 corridor overlay preserves and encourages the beautification of this corridor to** promote economic development and investment along the US70 corridor; promote automobile, bicycle and pedestrian safety along the US70 corridor; implement selected recommendations from the US70 corridor study; promote inter-modal transportation and support transit; and maintain the small-town feel and traditional character of the town.

~~4.7.7.2~~ **4.8.7.2 Establishment of the overlay.**

This overlay district is established over properties and uses immediately adjacent to the US70 corridor through the jurisdiction of Black Mountain, with the exception of the central business district and the industrial districts (HI-0 and LI-8). Unless explicitly stated otherwise within the ~~guidelines~~**regulations** of the overlay, all other regulations of the underlying zoning district shall apply.

~~4.7.7.3~~ **4.7.8.3 Regulations.**

A. Building orientation, form and setback in relation to US70.

1. Buildings adjoining the US70 right-of-way shall be no more than 50 feet from the curb and gutter of US70 as a maximum setback unless part of a ~~conditional or~~ special use permit.

...

**6.** Unless as part of a ~~conditional or~~ special use permit, parking areas shall be in the side or rear of the primary structure on the lot to the greatest extent practicable. The exemption to this requirement is handicapped parking spaces or parking areas providing less than 20 spaces which may be located in the front buildings.

**7.** All site plans shall design landscaping along the front of the building or parking lot adjacent to the right-of-way and in accordance with the town's landscaping ~~ordinance~~**regulations.**

...

**Section 45.** Chapter 5 of the Land Use Code is retitled "Additional Use Standards for Specified Uses," and is revised by deleting the following subsections:

**5.2 "Accessory Structures,"**

**5.3 "Adult Establishments,"**

**5.5 "Bed and breakfast homes and inns,"**

**5.7 "Campgrounds,"**

**5.8 "Camps, Summer"**

**5.9 "Conference Centers"**

**5.13 "Junkyards"**

**5.16 "Multi-Family Residential"**

**5.20 "Temporary Uses"**

**Section 46.** Section 5.1 is revised as follows:

## SECTION 5.1 – PURPOSE

## 5.1.1 - Purpose.

The Town of Black Mountain finds that there are certain uses that ~~exist which may be constructed, continued, and/or expanded provided they meet certain mitigating requirements~~ **require** specific ~~to their design and/or operation. Such additional requirements~~ **standards to** ensure compatibility with other uses and conformance to the town's comprehensive plan or other adopted plans. This chapter specifies ~~those~~ requirements that must be met by ~~all the uses~~ **each use** listed ~~in the uses as a "use permitted with additional requirements~~ **section for each district"** in chapter 4. **of this Land Use Code.**

~~Each use shall be permitted in compliance with all additional requirements listed for the use in this chapter. Certain uses are also classified as conditional uses or special uses and require board of adjustment approval per chapters 6 and 7.~~

**Section 47.** Section 5.4 of Chapter 5 of the Land Use Code, "Agriculture and animals" is renumbered as Section 5.2 and revised as follows:

E. Structures for storage of farm or maintenance equipment and supplies, and similar items associated with agricultural uses are permitted subject to the ~~issuance of a zoning permit~~ **accessory buildings or structures as long as they are incidental to the agricultural use. Accessory structures related to agricultural uses shall meet the structure** setbacks for their respective zoning districts and ~~they~~ shall not cover more than 30 percent of the total lot area.

**Section 48.** Section 5.6 "Boarding and Rooming Houses" is renumbered as Section 5.3 and revised as follows:

## SECTION 5.3 - BOARDING AND ROOMING HOUSES

## 5.3.1 - Boarding and rooming houses.

~~A. The owner or manager shall be a full time resident of said establishment.~~

~~B. A boarding or rooming house provides lodging for compensation to three or more unrelated tenants for a minimum of one week and is enclosed within one structure.~~

**C. A.** There shall be only one kitchen, a common dining room or study area, and no dining facilities or kitchens in the lodger's rooms where meals may be prepared and served.

~~D. B.~~ Boarding or rooming houses exclude hotels, motels, group homes, bed and breakfast homes and bed and breakfast inns.

**Section 49.** Section 5.10 "Day Care Centers," is renumbered as Section 5.4 and revised to read as follows:

## SECTION 5.4 – DAY CARE CENTERS

## 5.4.1 – Day care centers.

These requirements apply only to child and adult day care services providing care for more than six clients at a time. ~~(For regulations on day care centers serving less than six clients at a time, see home occupations 5.11).~~

**A.** Each applicant for a day care must submit documentation that ~~they are a~~ **shall be licensed child care provider or that they will meet the requirements of the or certified by the State of North Carolina Department of Health and Human Services for day care facilities.** ~~(http://www.daycare.com/northcarolina/)~~ **as required by State law.**

**B. Child** day care centers shall provide a fenced outdoor play area. The fence shall not be less than four feet in height.

**C. Day care centers shall provide locations for pick-up/drop off areas which do not impede traffic on town or state roads.**

~~D. Day care centers shall require a certificate of occupancy and shall be inspected annually for fire safety.~~

**Section 50.** Section 5.11 “Family Care Homes,” is renumbered as Section 5.5 and revised to read as follows:

## **SECTION 5.5 - FAMILY CARE HOMES**

### **5.5.1 - Family care homes.**

In accordance with G.S. chs. **122C, 131D, and 160D**, ~~these uses~~ **family care homes** are deemed residential uses ~~and are permitted in all residential districts for zoning purposes subject to the following additional requirements:~~

~~A. No more than six residents other than the homeowner and the homeowner's immediate family are permitted to live in a family care home.~~

**A. Each family care home shall be licensed by the North Carolina Department of Health and Human Services as required by State law.**

~~G. B.~~ No family care home may be located within a one-half-mile radius of any other residential care home.

~~D. C.~~ No exterior signage is permitted.

~~E. No lockdown, violent, or dangerous residents.~~

~~F. Only incidental and occasional medical care may be provided.~~

~~G. Family care homes shall require a certificate of occupancy and shall be inspected annually for fire safety.~~

**Section 51.** Section 5.12 “Home Occupations,” is renumbered as Section 5.6.

**Section 52.** Section 5.14 “Manufactured Homes on Individual Lots” is renumbered as Section 5.7 and revised as follows:

## **SECTION 5.7 - MANUFACTURED HOMES ON INDIVIDUAL LOTS**

...

### **5.7.2 - General provisions.**

~~A. A manufactured home (formerly known as a mobile home) must be built to or exceed. Manufactured Home Construction and Safety Standards (HUD Code, June 15, 1976) and must display a red certification label on the exterior each transportable section in order to be placed within the Town of Black Mountain jurisdiction.~~

~~B. Manufactured housing built before June 15, 1976, will be considered as legal nonconforming structures within the town and may be repaired or maintained according to: Nonconformities. Once removed or condemned however, these homes must be replaced with stick-built, modular or manufactured housing built to or exceeding the 1976 HUD Code Standard.~~

**A. The zoning administrator shall permit the temporary use of Manufactured-manufactured** homes, park model homes or recreational vehicles on individual lots ~~may be allowed temporarily under the following circumstances and by approval of the zoning administrator::~~

...

3. During the active period of construction/installation of a manufactured home, as a temporary residence on the same lot for a period not to exceed six months or the active construction period, whichever is less.

4. During the active promotion of any residential subdivision or **unified housingplanned unit** development, ...

5. As part of a manufactured housing or "park home" sales or manufacturing business.

~~D. Manufactured homes or park model homes may be permitted when used as a caretaker residence in conjunction with a rest home or convalescent home, provided that the rest or convalescent home existed prior to the adoption of this regulation, and provided that said rest or convalescent home is required by state law to have a caretaker residence adjacent to the home. The home shall be placed in the rear yard unless specific circumstances indicate otherwise in the judgment of the zoning administrator.~~

**E. B.** Manufactured homes used as residences on individual lots shall be considered principal uses for the purposes of the land use **ecode and** shall conform to the requirements of the district in which it is located.

~~F. C.~~ Singlewide manufactured homes are permitted only if **they are located** within a manufactured home park as part of an approved special use permit or pre-existing park, or as a primary residence on a single-family lot ~~if they can meet, provided that the architectural guidelines provided in sub~~paragraph G ~~or the guidelines for nonconformities in chapter 1. of this section are met.~~

~~G. D.~~ Manufactured homes shall adhere to the following **design** guidelines:

**1.** Replacement units of existing manufactured housing must be of a newer model than the manufactured home it is replacing and must comply with the HUD Home Construction and Safety Standards. ~~In no case shall a manufactured home dated before July 15, 1976, be used as a replacement home.~~

**2.** The home must be a doublewide manufactured home or, if a singlewide, must **be at least 16 feet in width and** not exceed a length to width ratio of three to one (3:1).

...

~~11. The unit must comply with all flood hazard prevention requirements when applicable.~~

#### **5.14.3 Permit required.**

~~C. To locate or replace any manufactured home, whether for use as a temporary or permanent structure, requires a manufactured housing permit which is administered through the office of the building inspector and requires a fee which is established by the board of aldermen. Applicants must submit an application form with the following attachments:~~

~~1. A site plan showing the location of the structure in relation to the required zoning setbacks, septic tank field, water tap, sewer line, driveways, and other natural features such as streams, landscaping, etc.~~

~~2. A septic permit from the Buncombe County Health Department or a sewer permit from the Metropolitan Sewage District.~~

~~3. Certification and documentation of the date the home was manufactured and compliance with HUD guidelines.~~

~~D. Once the manufactured housing permit is obtained, and the home is placed, the applicant shall meet the following requirements in order to receive the certificate of occupancy:~~

~~1. Provide a boundary line survey from a licensed surveyor indicating the~~

~~location of the structure as set on the site and in relation to the elements identified in the site plan.~~

- ~~2. \_\_\_\_\_ Provide an elevation certificate from a licensed surveyor if required in accordance with the flood hazard prevention regulations of this code.~~
- ~~3. \_\_\_\_\_ Provide documentation of water and sewer service or septic connections.~~
- ~~4. \_\_\_\_\_ Complete underpinning or foundation work as required in the permit.~~
- ~~5. \_\_\_\_\_ Complete installation of the stoop or deck as required in the permit.~~
- ~~6. \_\_\_\_\_ Complete all other requirements of the permit as determined by the building inspector and zoning administrator; and~~
- ~~7. \_\_\_\_\_ Clear all construction and transportation materials from the site.~~

**Section 53. Section 5.15 “Produce Stands, Tailgate Sales or ‘Garden Markets’” is renumbered as Section 5.8, retitled as “Farm Stands, Tailgate Sales or ‘Garden Markets’” and revised as follows:**

**SECTION 5.8 – ~~PRODUCE FARM~~ STANDS, TAILGATE SALES OR "GARDEN MARKETS"**

**5.8.1 – ~~Produce Farm~~ stands, tailgate sales or "garden markets."**

A. ~~Produce Farm~~ stands associated with garden markets shall be allowed as an accessory use in all districts.

...

D. All ~~produce farm~~ stands shall not be located closer than ten feet to any side lot line unless a greater setback is required for the zoning district in which it is located or as directed by the zoning administrator for the purpose of traffic safety.

E. Signs for a farm stand or tailgate sales shall not be illuminated, nor have flashing lights, nor shall they exceed four square feet in area. **Off-premises signs are not permitted.**

~~F. A produce stand in operation for longer than four continuous months, where produce is sold that is not from the lot on which the stand is located may require a business privilege license (see chapter 114 [9] of the Town Code of Ordinances) and must be in compliance with the zoning district regulations in which it is located.~~

**Section 54.**

- a. Section 5.17 “Neighborhood Fueling Stations” is renumbered as Section 5.9
- b. Section 5.18 “Newspaper and Periodical Distribution Boxes” is renumbered as Section 5.10
- c. Section 5.19 “Secondary Dwellings” is renumbered as Section 5.11.
- d. Section 5.21 “Wireless Communications” is renumbered as Section 5.12 and revised as follows:

**SECTION 5.12 - WIRELESS COMMUNICATIONS**

**5.12.1 - Wireless facilities not associated with a communications tower.**

...

D. Wireless facilities associated with a tower ~~must adhere to the regulations set forth for communications towers and is a conditional use only within designated districts are considered~~



communications towers for purposes of these regulations and are allowed in certain zoning districts only upon issuance of a special use permit.

**Section 55.** Section 5.22 “Tattoo Parlor/Body Piercing Studio” is renumbered as Section 5.13 and revised as follows:

SECTION 5.13 - TATTOO PARLOR/BODY PIERCING STUDIO

5.13.1 - Tattoo parlor/body piercing studio.

A. ~~No tattoo parlor or body piercing studio such business of either classification shall be located within 500 feet of any other such business or either classification~~, as measured in a straight line from property line to property line, of:

1. ~~any other tattoo parlor or body piercing studio,~~
2. ~~a church,~~
3. ~~a public or private elementary or secondary school, child day care or nursery school,~~
4. ~~a public park,~~
5. ~~residentially zoned or residentially used property, or~~
6. ~~any establishment with an on-premises ABC license.~~

~~B. No such business of either classification shall be located within 500 feet of a church, public or private elementary or secondary school, child day care or nursery school, public park, residentially zoned or residentially used property, or any establishment with an on-premise ABC license, as measured in a straight line from property line to property line.~~

~~C.~~ B. Ear piercing, as a principal or accessory use, shall not be considered a body piercing studio for purposes of this section.

~~D.~~ C. Tattoo and/or body piercing operations shall not be considered home occupations.

~~E. Any person engaging in tattooing or body piercing shall have completed an OSHA approved blood-borne pathogen course and each tattoo/body piercing studio shall have an exposure control plan that is updated annually.~~

~~F. Any person engaging in tattooing shall register with the Buncombe County Health Department and receive a valid tattooing permit. Permits must be renewed on an annual basis.~~

~~G. All tattooing locations shall have a required inspection completed by the Buncombe County Health Department to ensure compliance. Inspections are conducted on an annual basis.~~

**Section 56.** Section 5.23 “Recreation Services” is renumbered as Section 5.14 and revised as follows:

SECTION 5.14 - RECREATION SERVICES

5.14.1 - Recreation services (outdoor).

...

~~D. Hours of operation shall be no earlier than 7:00 a.m. and no later than 11:00 p.m.~~

**Section 57.** Chapter 6 “Conditional Use Permits” is deleted in its entirety.

**Section 58. Sections 7.1, 7.2, 7.3, and 7.4 are deleted in their entirety and replaced with the following:**

**SECTION 7.1 – PURPOSE**

**7.1.1 – Purpose.**

This Land Use Code provides for certain uses to be located by right in districts where the uses are compatible with the purpose of the district and with other uses located in the district. This Land Use Code also provides for certain uses to be located in districts only by complying with additional development standards to insure that same compatibility. This section provides additional requirements for certain uses that are in keeping with the intent and purposes of the district, but which may have substantial impacts on the surrounding area and should therefore only be allowed after a review of the specific proposal.

To ensure that these uses are compatible with surrounding development and in keeping with the purposes of the district in which they are proposed to be placed, they may be established only after issuance of a special use permit as required by this section.

**SECTION 7.2 – PROCEDURES**

**7.2.1 – Pre-Application Technical Review.**

The applicant shall schedule a pre-application meeting with the subdivision administrator. The applicant shall bring a sketch plan of the proposed development to the meeting that meets the requirements set forth in section 1.4.6.

**7.2.2 – Application requirements.**

A. All applications for a special use permit must be accompanied by a site plan (drawn to scale) that includes all of the following information as applicable:

1. A boundary survey showing the total acreage, zoning classification(s), date, and north arrow (with the north arrow oriented up, i.e., to the top of the map);
2. All existing easements, reservations and rights-of-way and all setbacks required for the zoning district;
3. Proposed location of all structures, their approximate square area and general exterior dimensions;
4. Proposed use of all land and structures;
5. Traffic, parking, and circulation plan, showing proposed locate and arrangement of parking spaces and ingress and egress to adjacent streets;
6. Proposed screening, including walls, fences, or planting areas, as well as treatment of any existing natural features;
7. The name of the development, if applicable, and the name, address, and phone number of the owner;
8. Approximate total acreage of the proposed development;
9. Tentative street and lot arrangement, including designations of driveways, parking lots, open space, greenways, and stormwater management areas;
10. Topography at five-foot intervals and the location of existing drainages or swales;
11. A vicinity map showing the location of the development in relation to neighboring tracts, subdivisions, roads, or nearby buildings and their zoning and uses;
12. Location of flood hazard areas from FIRM map;
13. Location of existing or proposed utilities;
14. Proposed signs and their locations;
15. Proposed phasing, if any, and approximate completion time of the project.

B. Whenever an application for a special use permit involves the subdivision of land, the following agencies or individuals shall be given an opportunity to make recommendations concerning the proposed development plan before consideration by the board of adjustment:

1. the district highway engineer as to the any proposed state streets, state highways, and related drainage systems;
2. the county health director, public works director, MSD representative, and representatives of any other local public utility, as appropriate, as to proposed water or sewerage systems;
3. the fire marshal; and
4. the stormwater and floodplain administrator(s)

#### 7.2.3 – Hearing Required.

The board of adjustment shall hold a quasi-judicial hearing to consider the special use permit application and shall, by majority vote, either approve, approve with modifications, or deny the permit application.

#### 7.2.4 – Notice of Hearing.

Notice of the hearing before the board of adjustment shall be provided as follows:

A. Staff shall prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way within the same period specified for mailed notices of the hearing. When multiple parcels are included, a posting on each individual parcel is not required but notices shall be placed in strategically visible locations so as to provide reasonable notice to interested persons.

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

C. Staff shall mail notice of the hearing to the applicant; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels within 200 feet of the parcel of land that is subject of the hearing; and to any other persons entitled to receive notice as provided by the development regulations. In the absence of evidence to the contrary, notice will be mailed to the owner reflected in the county tax listing at the address where county tax notices are sent. The notice must be deposited in the mail at least ten days but not more than 25 days prior to the date scheduled for the hearing.

D. staff shall place a notice of the hearing on the town's website.

#### 7.2.5 – Materials provided.

Staff shall transmit to the board, in written or electronic form, all applications, reports, and written materials relevant to the application. Such materials may be distributed prior to the hearing if, at the same time they are distributed to the board, a copy is also provided to the applicant and to the landowner if that person is not the applicant. The administrative materials shall become a part of the hearing record. Objection to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

#### 7.2.6 – Hearing procedure.

A. The applicant has the burden of producing competent material and substantial evidence tending to establish the existence of the facts and conditions which this ordinance requires for the issuance of the special use permit.

B. The applicant, the Town of Black Mountain, and any person who would have standing to appeal the issuance or denial of the special use permit shall have the right to participate as a party at the hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Objections shall be ruled upon by the board chair and the chair's ruling may be appealed to the full board.

C. In considering an application for a special use permit, the board of adjustment will consider and may attach reasonable and appropriate conditions to the location, nature, and extent of the proposed use or uses, structures and other improvements, and the relation of such uses, structures, or improvements to surrounding property. Any such conditions may relate to parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, and other matters the board of adjustment may find appropriate or that the applicant may propose.

#### 7.2.7 – Standards.

A. No special use permit shall be issued or amended unless the board of adjustment shall find that:

1. The special use will not be detrimental to or endanger the public health, safety, or general welfare.
2. The special use will not be injurious to the use and enjoyment of other property in the immediate vicinity.
3. The special use will not substantially diminish or impair property values within the immediate vicinity.
4. The special use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
5. The exterior architectural appeal and functional plan of any proposed structure will not be so at variance with the exterior architectural appeal and character of the neighborhood or district in which the use will be located.
6. Adequate utilities, access roads, drainage and/or other necessary facilities have been, are being, or will be provided.
7. Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion in the public streets.
8. If the special use involves the subdivision of land, it conforms to all applicable regulations of Chapter 3 of this Land Use Code.
9. The special use, in all other respects, conforms to the applicable regulations of the district in which it is located, except as such regulations have, in each instance been modified by the board of adjustment in approving the issuance of the special use permit.

#### 7.2.8 – Effect of approval.

A special use permit, once approved, attaches to and runs with the land and no subsequent development or use of the property may be undertaken except in conformity with the permit and all plans, specifications, and conditions.

#### 7.2.9 – Reapplication for a special use permit.

If an application for a special use permit is denied by the board of adjustment, a reapplication for that special use on that property may not be filed, unless, upon request of the property owner, the board of adjustment determines that there have been sufficient changes in conditions or circumstances bearing on the proposed project to warrant a reapplication.

#### 7.2.10 – Modification of an approved special use permit.

A. The owner of property that is subject to an approved special use permit may apply for a modification of the special use permit by following the same procedure as if applying for a new special use permit. Applications for a modification must include a new site plan that identifies the proposed

changes. Evidence presented at the hearing on the proposed modification will be limited to the effect of the proposal on the original special use permit, any plans or conditions that were a part of the original special use permit, and the standards and requirements of the ordinance under which the original special use permit approved.

B. Changes to the plans and conditions of development that were the basis of the approval of the special use permit require board of adjustment approval; provided, however, that certain minor changes may be approved by the zoning administrator without board of adjustment approval, if:

1. Building floor areas are not changed by more than 20 percent;
2. Building or structure heights are not increased by more than 20 percent;
3. Density is not increased;
4. Relocated buildings, roads or uses maintain the same general relationships, landscaping, road, and utility standards; and
5. The amendment preserves compliance with any specific requirement of this chapter and the zoning district requirements at the time of the amendment request.

If the zoning administrator determines that a proposal is not a minor change, the application for changes shall be forwarded to the board of adjustment for consideration.

#### 7.2.11 – Revocation or termination.

A special use permit may be revoked as provided in Section 1.10.8. After revocation, the special use must cease, and use or development of the property must comply with the standards of the district where the property is located.

### SECTION 7.3 – SPECIAL USE: ADULT ESTABLISHMENTS

#### 7.3.1 – Purpose.

Adult establishments, because of their nature, are recognized as having characteristics which may be out of character with and detrimental to the general health, welfare, and safety of nearby residential districts and certain other uses. The Town Council determines that regulation of these uses is necessary to ensure that these adverse effects do not contribute to the blighting or downgrading of nearby residential districts and to protect the integrity of those districts.

#### 7.3.2 – Requirements.

- A. No printed material, slide, video, photograph, written text, live show, or other visual presentation format shall be visible from outside the establishment.
- B. No live or recorded voices, music, or sounds shall be heard from outside the establishment.
- C. There shall not be more than one adult business use (either the same use or another use) located on the same property, building, or structure.
- D. No adult establishment may have sleeping quarters.

### SECTION 7.4 – SPECIAL USE: JUNKYARDS

A. In addition to general SUP application requirements, a site plan must show the distance from the nearest edge of the right-of-way of any interstate or primary highway, or a North Carolina route.

#### B. Requirements:

1. The proposed site shall be not less than one nor more than five acres;
2. The proposed site shall not be located nearer than 30 feet to any residence nor within one-half mile of another junkyard, measured from the boundary of the junkyard as shown in the approved site plan to the nearest residential structure.
3. Screening of a minimum eight-foot-high fence and evergreen barrier shall be required along any boundary abutting a residential lot or residentially zoned lot or public right-of-way.

**Section 59. Section 7.6 is revised to read as follows:**

**SECTION 7.6 - SPECIAL USE: COTTAGE HOUSING DEVELOPMENT (CHDS)**

**7.6.1 - Purpose.**

The purposes of this type of development and these accompanying guidelines are to:

- 1.** Provide a housing type that responds to changing household sizes and ages (e.g., retirees, small families, single person households);
- 2.** Provide opportunities for ownership of small, detached dwelling units ~~within all districts;~~;
- 3.** Encourage creation of more usable open space . . . ;
- 4.** Preserve a housing type . . . ; and
- 5.** To accommodate and encourage . . .

**7.6.2 - Applicability.**

A cottage is a small, detached dwelling unit, not greater than 1,100 square feet in total floor area that may be developed at a density greater than the underlying zone. More than two cottages may occupy a single lot and may be owned separately ~~as long as there are existing agreements for the maintenance and use of common areas.~~ A cottage development may be developed in any zoning district except for HI-0.

**7.6.3 - Density.**

Cottage housing developments shall contain a minimum of two free-standing structures located in a cluster to encourage a sense of community among the residents. ~~A development site may contain more than one cottage housing development, but in no case shall a single cottage housing development exceed eight units per acre unless meeting specifications for the inclusionary housing bonus, in which up to ten units per acre are allowed.~~

**7.6.4 - General design requirements.**

In addition to the general **SUP application** requirements ~~of this chapter~~, the following guidelines shall be met:

. . .

J. Driveways ~~and~~, parking areas, and any common open space, parks, or stormwater management facilities, shall be considered common areas and must be maintained by ~~an established neighborhood~~ **homeowners'** association.

L. Common area . . . :

2. Private open space shall be a minimum of 300 square feet ~~or of~~ private, contiguous, usable space . . .

**Section 60. Section 7.7 is revised to read as follows:**

**SECTION 7.7 - SPECIAL USE: MANUFACTURED HOME PARKS (MHP)**

**7.7.1 - Special use: Manufactured home parks (MHP).**

~~Manufactured homes less than 16 feet in width and park model homes or other variations of manufactured housing that are smaller than 1,000 square feet are allowed as part of a manufactured home parks, cottage developments or other special use permits only. Manufactured home parks are a special use and must be approved by the zoning board of adjustment.~~

A. Manufactured home parks may include singlewide and doublewide manufactured housing and other types of residential structures ~~as long as they meet the requirements and conditions of the special use permit and the town building regulations, including: park model homes, modular homes and stick built homes or cottages.~~

- B. The location of . . .
- C. Manufactured home parks must meet the following requirements:
1. ~~Minimum lot area.~~ Must have a minimum lot area of one acre.
  2. ~~Lot yard requirements.~~ Must have a minimum front, side and rear yard, or perimeter setback, of 30 feet between the property boundary and the nearest structure.
  3. ~~Lot screening requirements.~~ Must have an evergreen or fenced screen along the property boundary separating the park and adjacent uses except where the property abuts a public park or right-of-way, such as a road, greenway, or other designated public space, or where it abuts a stream or other surface water.
  - ~~4. — Must meet all applicable requirements, including flood prevention and stormwater regulations.~~
  5. 4. Must provide a minimum of 20 feet between structures. Driveways ~~and~~, parking areas, and open decks and patios may be provided within this space.
  - ~~6. 5.~~ All structures attached to a manufactured home or other residential structure, including storage buildings, carports, and covered decks or porches, shall be considered part of a ~~mobile~~ **manufactured** home for purposes of determining separation requirements.
  - ~~7. 6.~~ Must provide vehicle access that will accommodate emergency vehicles ~~s~~ to all units within the park. Internal road system must be paved according to the ~~requirements as indicated in the Town of Black Mountain~~ standards and details manual.
  - ~~8. 7.~~ Parking . . .
  - ~~9. 8.~~ Five percent . . .
  - ~~10. 9.~~ Detached accessory structures must be at least five feet from any manufactured home, ~~both the primary structure and any nearby manufactured homes or structures in the park,~~ and must be less than 150 square feet in dimension.
  - ~~11. 10.~~ Facilities for waste collection . . .
  - ~~12. 11.~~ ~~Supportive facilities such as laundry, recreational or other structures must meet all other requirements of the town building regulations.~~ Covered space . . .
  - ~~13. 12.~~ ~~Water supply system.~~ Water mains properly connected with the municipal water supply system or with an alternate supply **approved by** the Department of Environmental Health Services . . .
  - ~~14. 13.~~ Sanitary sewer:
  - ~~15. — a.~~ When the manufactured home park is located within the service area of a public sewerage system, sanitary sewer shall be installed in such a manner as to ~~serve~~ adequately **serve** all lots with connection to the public system.
  - ~~16. — b.~~ Where lots cannot be economically connected with a sewerage system, they must contain adequate area for the installation of approved septic tank and disposal fields and must be approved in writing by the **Buncombe County** Department of Environmental Health.
  - ~~17. — c.~~ Whenever an extension of a water and sewer line is necessary, . . . The town will not accept or maintain any water system which does not contain a pressure of 30 P.S.I. based upon the existing main tank level. ~~All water taps shall be made by the town.~~ . . .
  - ~~18. 14.~~ Skirting and underpinning . . .
  - ~~19. Must meet the general provisions and special use provisions of the land use code for lighting, landscaping, signage and other general provisions or in terms of special use requirements.~~

**Section 61. Section 7.8 is revised to read as follows:**

**SECTION 7.8 - SPECIAL USE: PLANNED UNIT DEVELOPMENTS (PUD)**



## 7.8.1 - Purpose.

Planned unit developments (PUDs) are planned residential, commercial, or mixed-use communities ~~to that~~ encourage high-quality design, innovative arrangements of buildings and open space throughout the project site by allowing for flexibility in **lot configuration and** design. Units within a PUD may be leased or sold separately. A residential PUD may be an apartment complex, a condominium complex, or a town-home development. The ~~intent requirements of planned unit developments is~~ **this section are intended** to:

1. Facilitate more affordable housing by providing possibilities for savings in infrastructure, installation costs, and energy costs through clustering of dwellings;
2. Retain natural features and encourage developments that will be compatible with environmentally sensitive areas;
3. Encourage pedestrian circulation within and adjacent to the PUD;
4. Encourage mixed-use development;
5. Encourage quality design and management of open space.
6. Establish criteria and guidelines for housing developments consisting of one or more principal structures or buildings and accessory structures or buildings to be constructed on a lot or plot not subdivided into the customary streets and lots, but in which dwelling units, are owned **or leased** individually, and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis or by an established ~~home owners~~ **homeowners'** association;
  - ~~Provide guidelines for condominium, town-home, or multi-family development that consists of more than three units located in one or more individual structures;~~
  - ~~Provide for a cohesive approach to multi-family development that is sensitive to the surrounding properties and which protects the health, safety and welfare of its residents and neighbors.~~
7. ~~To~~ Establish additional criteria . . .
8. **Provide for a cohesive approach to multi-family development that is sensitive to the surrounding properties and which protects the health, safety and welfare of its residents and neighbors.**

## 7.8.2 - Density.

PUDs with residential units shall contain a minimum of four ~~and a maximum of eight~~ dwelling units per acre ~~located in a way so as to share~~ and no PUD shall have greater than eight units per acre. The site shall be configured to allow for **shared** common areas, buildings, or parking. ~~PUDs that include units at affordable price points, based on affordable housing thresholds established by Buncombe County, are eligible for a density bonus if it meets the specifications for the inclusionary housing regulations and as allowable within the zoning district in which it is located.~~

## 7.8.3 - Uses.

~~A. The Proposed uses to be included within the PUD shall be indicated in the application and on the master plan for the special use permit and shall be generally compatible with the uses allowed in the underlying zoning district.~~

~~B. Documentation of conformance with any applicable state and federal regulations regarding a particular use to be located within the PUD shall be provided.~~

## 7.8.4 - Dimensional requirements.

A. Lot size, buffer, and yard regulations for the zoning district in which **the** proposed PUD is to be located must be met on the perimeter of the project.

B. The maximum building height of any structure in the PUD shall not exceed the building height requirement of the district in which it is located.

## 7.8.5 - PUD design.

## 7.8.5.1 Architectural features.

A. The architectural style, surface treatment and placement on the lot of the proposed structures shall be ~~done in a way that is~~ in harmony and in character with the surrounding properties and the neighborhood as a whole. ~~The town shall determine if this standard is met based on materials required in the general plan and other information that the town may obtain. Generally:~~

**B. Proposed structures shall, at a minimum, comport with the following requirements:**

**1. Buildings shall front the street or a parking lot, which shall have access to existing or planned pedestrian facilities or greenways as reflected in the Pedestrian Transportation Plan or Greenway Master Plan;**

~~4.~~ **2.** Buildings shall be designed to the topography and contours of the property; **to minimize impact for the site;**

~~2.~~ **3.** Fenestration, porches, stoops, . . .

~~3.~~ **4.** Roof design, including pitch and/or parapet shall be compatible with the surrounding neighborhood.

~~B. Location and footprint of buildings and roads shall be designed so as to minimize impact for the particular site and to blend in with the character of the surrounding neighborhood.~~

**5.** Building facades that front a street must extend parallel to that street. ~~Other architectural features shall be in character with the surrounding neighborhood or with existing architecture of the town's historic district or existing residential neighborhoods adjacent to downtown.~~

~~D. Building fronts shall address the street or parking lot and include pedestrian access to road frontages identified on the town pedestrian or greenway master plan and to parking areas.~~

~~E. All buildings shall be designed so as to conform to the standards of the town's fire insurance safety requirements as identified by the town's public safety director or his/her designee.~~

#### 7.8.5.2 Access and streets.

A. Points of **accessingress** and egress shall be located to maximize safety and minimize traffic hazards, inconvenience and congestion and may require additional traffic control devices if recommended in a traffic impact analysis.

~~B. The minimum amount of right-of-way necessary in order for the Town of Black Mountain to consider the dedication of streets within a PUD must meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual. Streets and parking areas to remain private must meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

**B. Streets and parking areas must be designed to the requirements in the standards and details manual.**

. . .

D. Designs shall permit comfortable use of the street by motorists, pedestrians, and bicyclists. Pavement widths, design speeds and the number of motor travel lanes should be minimized to enhance safety for motorists and non-motorists alike. The specific design of any given street must consider the relationship of the street to the overall project and town street network ~~and meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

E. If the street or road serving the proposed development does not meet the ~~requirements as indicated in the Town of Black Mountain Standards and Details Manual~~**town street standards** or the recommendations of the traffic impact analysis, the developer shall make the necessary improvements to the street or road; or shall make a payment to the town to cover the cost of such improvements. The town may waive this requirement for street or road improvements if the town determines that the improvement

will cause more community disruption than justified by the increased traffic from the proposed development.

F. Traffic and truck egress/ingress must be designed ~~per the requirements so as indicated in the Town of Black Mountain Standards and details manual and~~ to minimize traffic hazards . . .

#### 7.8.5.5 Utilities and services.

A. Stormwater management **facilities** shall be provided, as approved by the town and in accordance with the town stormwater regulations. ~~Stormwater facilities shall be provided which will control any increase in the rate of stormwater runoff as a result of development.~~

...

### **Section 62.** Section 7.9 is revised to read as follows:

#### SECTION 7.9 - SPECIAL USE: INDUSTRIAL PARK DEVELOPMENT (IPD)

...

##### 7.9.3 - Requirements.

In addition to the general **SUP application** requirements ~~of this chapter~~, the following guidelines shall be met unless the industrial park involves the redevelopment of an existing commercial, industrial, or manufacturing site or "Brownfield" where pre-existing conditions may require a variance from these requirements:

...

G. Out-buildings or future expansion areas shall be designated on the plan with building envelopes. ~~Eventual construction on these sites need only be approved by the building inspector as long as~~**Provided that** construction takes place within the approved building envelope~~-, construction may proceed upon issuance of a building permit. Otherwise,~~ expansion or amendments to the original plan shall ~~otherwise go through~~**require approval of** the ~~zoning~~ board of adjustment as an amendment to the SUP.

H. A building permit and certificate of occupancy is required whenever a unit of the park changes ownership, tenant~~cy~~, or use, to ensure that all building and fire safety codes are met.

...

### **Section 63.** Section 7.10 is revised to read as follows:

#### SECTION 7.10 - SPECIAL USE: DOWNTOWN DEVELOPMENT (DD)

...

##### **7.10.4** - Requirements.

In addition to the general **SUP application** requirements ~~of the land use code~~, the following shall be required:

A. Buildings shall address thoroughfares with doorways and windows that front the sidewalk.

B. New construction shall conform to the historic district guidelines in their design and ~~achieve a~~ certificate of appropriateness from the historic preservation commission ~~before being forwarded~~**shall be issued prior to** ~~the zoning board of adjustment~~**application for a special use permit.**

...

F. Minimum setbacks shall be ten feet in width from the back of curb to the edge of building or the average setback of existing built upon lots on the same street frontage of the block-, **whichever is greater.** Maximum setbacks shall not be more than ten additional feet from the determined minimum setback unless approved by the ~~zoning~~-board of adjustment.

**Section 64. Chapter 7 of the Land Use Code is amended by adding a new Section numbered 7.11 entitled “Special Use: Multi-Family Residential” which reads as follows:**

#### SECTION 7.11 – SPECIAL USE: MULTI-FAMILY RESIDENTIAL

- A. Where two or more multi-family residential buildings are constructed under single ownership, whether simultaneously or at different times, the entire parcel of land occupied by such multi-family residential buildings shall be considered one lot and parking spaces and usable open space will continue to be available in the same proportions to all occupants of the buildings on the lot.
- B. Minimum horizontal distance between any buildings or between any building and any lot line (other than a street right-of-way), shall be 25 feet.
- C. Solid waste storage facilities shall be provided either in the form of a screened and accessible bulk container or individual containers for each dwelling unit. When used, individual containers shall be screened, uniform in appearance, marked with the number of the dwelling unit they serve, and provided with locking lids.
- D. Structure(s) must meet all general requirements for the district except that the board of adjustment may require a lesser or greater front setback to harmonize with surrounding structures.
- E. Landscaping consisting of grass, trees and ornamental shrubs shall occupy no less than five percent of the total lot area. The landscaping shall be done in addition to any required screening or buffer. The location and type of landscaping shall be shown on the site plan.
- F. The architectural style, surface treatment and placement on the lot of the proposed structure shall be done in a way that is in harmony and in character with the surrounding properties and the neighborhood as a whole.
- G. The plan shall provide for internal pedestrian circulation and connections to public rights-of-way, existing sidewalks, transit stops or greenways consistent with town construction specifications.
- H. A clearly defined entrance to the parking area shall be provided of no more than 24 feet in width. Direct access to individual parking spaces from public rights-of-way shall not be allowed.

Parking shall be provided at a minimum rate of two spaces per dwelling unit. No grade within the parking area or access lanes shall exceed 14 percent.

**Section 65. Chapter 7 of the Land Use Code is amended by adding a new Section numbered 7.12 entitled “Special Use: Wireless Communication Towers” which reads as follows:**

#### SECTION 7.11 – SPECIAL USE: WIRELESS COMMUNICATION TOWERS

- A. All new wireless communication facilities shall be engineered, designed, and constructed to be capable of sharing the facility with other providers, to collocate with other existing wireless communication facilities and to accommodate the future collocation of other wireless communication facilities.
- B. These regulations do not apply to amateur radio antennas affected and controlled by FCC regulations codified in Chapter 47, Section 97, of the Code of Federal Regulations.
- C. In addition to the general SUP application requirements, the following shall apply:
  - 1. No person, firm or corporation shall install or construct any wireless communication facility unless and until a tower antenna use application (TAA) has been issued pursuant to the communication tower requirements of these regulations.
  - 2. A permit shall not be issued until the applicant proposing a new wireless communications facility shall demonstrate that it has made reasonable good faith attempt to locate its wireless communication

facility onto an existing structure. Competitive conflict and financial burden alone are not deemed to be adequate reasons against collocation.

3. All applicants for wireless communications facilities are required to submit a statement with the application agreeing to allow and reasonably market collocation opportunities to other wireless communications facility users and to design facilities to allow for additional attachments. The statement shall include the applicant's policy regarding collocation of other providers and the methodology to be used by the applicant in determining reasonable rates to be charged other providers. The collocation agreement shall be considered a condition of issuance.

4. Construction of all wireless communication facilities shall comply with the requirements of the N.C. Building Codes and permitting process in addition to the requirements of these regulations.

5. Attached wireless communication facilities shall not add more than 20 feet to the height of the existing building or structure to which it is attached. Antenna attachments to existing communication towers shall not increase the height of the tower above the maximum permitted height of that tower. In no instance shall a new tower exceeding 20 feet in height be allowed on a building.

6. Height for wireless communication facilities with support structures shall be reviewed on a case-by-case basis as part of the special use permit process. The height of the proposed facility should consider ground elevations, topographical and other site development criteria within these regulations.

7. Attached wireless communications facilities shall meet the setback provisions of the underlying zoning district in which they are located. An attached wireless communication facility antenna array may extend up to 30 inches horizontally beyond the edge of the attachment structure so long as the antenna array does not encroach upon an adjoining parcel. Wireless communications facilities and towers with support structures shall fall within the setback requirements in their entirety.

8. Wireless communications facilities with support structures shall be enclosed by an opaque fence (excluding slatted chain link) not less than six feet in height. Security features may be incorporated into the buffer and landscaping requirements for the site. Nothing herein shall prevent fencing that is necessary to meet requirements of state or federal agencies.

9. Existing mature tree growth and natural land formed on the site shall be preserved to the extent feasible; however, that vegetation that cause interference with the antennas or inhibits access to the equipment facility may be trimmed or removed.

10. Grading for the new wireless communication facility shall be minimized and limited only to the area necessary for the new facility.

11. Wireless communications facilities shall be designed to be compatible with the existing structures and surroundings to the extent feasible, including placement in a location which is consistent with proper functioning of the wireless communications facility and the use of compatible or neutral colors, or camouflage technology.

12. Wireless communications facilities shall not be artificially illuminated, directly or indirectly, except for:

a. Security and safety lighting of equipment buildings if such lighting is appropriately down shielded to keep light within the boundaries of the site;

b. Such illumination of the wireless communications facility as may be required by the FAA or other applicable authority installed in a manner to minimize impacts on adjacent residents; and

c. Unless otherwise required by the FAA or other applicable authority, the required light shall be red and type of lens used to reduce ground lighting when the site is within 100 feet of a residential dwelling.

13. Wireless communications facilities shall not display any signage, logos, decals, symbols, or any messages of a commercial or noncommercial nature, except for a small message containing provider identification and emergency telephone numbers and such other information as may be required by local, state, or federal regulations governing wireless communications facilities.

14. Wireless communications facilities must provide documentation that the proposed facility will meet all current applicable FCC and Electronics Industries Association and Telecommunications Industries Association (EIA/TIA) standards.

15. Sound prohibited. No unusual sound emissions such as alarms, bells, buzzers, or the like are permitted.

16. All utility lines for wireless communications facilities shall be installed underground to the wireless communications facility.

17. Access to the tower site must be graded and stoned in a manner that will allow access by police and fire/rescue units.

**Section 66, Chapter 7 of the Land Use Code is amended by adding a new Section numbered 7.13 entitled “Special Use: Campgrounds” which reads as follows:**

**SECTION 7.13 – SPECIAL USE: CAMPGROUNDS**

**7.13.1 - Application and purpose.**

- A. All campgrounds, regardless of whether the campsites are offered for sale, developed as rental sites, or let on assignment, are subject to the additional requirements contained herein.
- B. The purpose of these regulations is to ensure that campgrounds and campground related facilities are developed in a safe and orderly fashion which supports the goals of the comprehensive plan and minimizes the impact on surrounding properties.

**7.13.2 - Definitions.**

*Independent recreational vehicle (RV).* A recreational vehicle which can operate independently of connections to sewer, water and electric systems. It may contain water flushed toilet, lavatory, shower and kitchen sink, all of which are connected to water storage, greywater storage, and sewage holding tanks located within the RV.

*Dependent recreational vehicle (RV).* A recreational vehicle which is dependent upon a service building for toilet and lavatory facilities.

*Tent campground.* A campground designed for use of tents by persons in vehicles. This shall not include the camping of persons in vehicles not designed for camping purposes. Such campgrounds are dependent upon a service building for toilet and lavatory facilities.

*Walk-in campground.* A camping area designed exclusively for those persons which walk, bicycle, or use some other non-motorized means of access. Such areas shall contain only service roads for maintenance of campground facilities and shall not be used for parking associated with camping. (This shall be a tent use area only.) Such campgrounds are dependent upon a service building for toilet and lavatory facilities.-

**7.13.3 - Campground standards for all campgrounds.**

The following standards shall apply to all campgrounds containing two or more campsites or lots, including sites for tents, accommodations for backpackers and recreational vehicles (RVs).

- A. All plans shall be submitted to the planning board for review. The planning board may review all developments in two phases. A preliminary development plan shall be required and shall be received at least 14 days before the next planning board meeting. When this preliminary development plan is approved or approved with conditions, construction of the campground may begin. When the construction is complete, the planning board may request a review approval of final or as-built plan of the campsite. This review shall be mandatory if the preliminary development plan was approved with conditions, or if the final or as-built plan has had significant changes since the submittal of the preliminary development plan. After all approvals have been completed, a certificate of compliance shall be issued.
- B. All proposed campgrounds shall be a minimum of three acres in size.
- C. Certificate of compliance required. Any proposed campground shall not be allowed to open until such campground has met all planning and building requirements of this ordinance for the Town of Black Mountain and the State of North Carolina.
- D. Water-sewer line extensions. All proposed and required water sources and sanitary facilities serving campgrounds shall conform to the requirements of the Town of Black Mountain and/or the Metropolitan Sewer District. Any applicant shall further be responsible for development and submittal of all water and sewer plans necessary for submittal to above-mentioned agencies for approval as extensions to systems operated by these agencies.

E. Other permanent structures. Permanent structures other than camp platforms and recreational support and sanitary facilities shall be prohibited unless the developer or owner can prove to the planning board the necessity or desirability for such a structure. Structures commonly considered to fall under the three above categories could include a gatehouse, office, laundry area, video/amusement area, common area shelters, or picnic table shelters for campsites. Camping cabins shall be allowed in an established campground at the discretion of the planning board and by approval of the building inspector.

F. Building types. Conventional, industrialized (modular) and manufactured houses are prohibited on all campsites. Such structures shall only be allowed for the purpose of housing the owner or caretaker of the campground or as used for camping cabins in the campground.

G. Storage of RVs. Storage of all types of recreational vehicles within campgrounds shall be limited to no more than one stored RV per ten RV sites. Such storage area shall be buffered and screened, preferably by vegetation, from the campground or outside areas.

H. Number of days permitted to camp. Continuous camping shall be restricted to a period of no more than 180 consecutive days within a one-year period. Tent camping shall be limited to a period of 30 consecutive days within 60-day period.

I. Access to water for all campsites/RV utility islands. Each campground shall have access to a source of potable water approved by the applicable health authority and building codes. It is preferable to provide one water outlet per non-RV camping unit; however a minimum of one outlet for every two non-RV units shall be provided with two hose bibs equipped with vacuum breakers. As an alternative to on-site water outlets for non-RV camping sites, a centralized location of potable water not more than 200 feet from any non-RV site could also be used as an alternative. Each site intended for use as a RV camping site shall have access to water within the RV's utility island. All water outlets, sanitary sewer line taps, and electrical outlets for RVs shall be located on an approved RV utility island. All water taps or outlets serving all campsites shall be of a type compatible with garden hose connections. All water facilities serving campsites of any type shall be required to have backflow prevention devices as required by the Black Mountain Department of Public Works.

J. Campfires shall be contained and controlled. Stoves or grills are recommended for all campsites. Fire rings shall be required at those locations where fires are permitted. Facilities provided for above activities shall either be provided at campsites or restricted to designated locations. No fire shall be allowed within ten feet of a bottled gas container or other combustible source of fuel, and no open fire shall be left unattended. No fires outside of structures intended for the containment and control of fires shall be permitted.

K. Refuse disposal. All campgrounds shall provide fly-proof, watertight, containers for the disposal of refuse. These containers shall also be constructed and located such that they are not subject to rodent infestation or dog and bear invasion. Containers shall be provided in sufficient number and capacity to properly store all refuse. Refuse for camping areas shall be collected at least once a day.

L. Overflow parking area. All campsites shall be limited to a total of one non-RV parking space. An additional area for parking of such vehicles shall be provided equal to one parking place for every ten campsites. Such parking area can be surfaced with gravel. At no time shall parking be permitted on access roads to the campground.

M. Insect control. Owners of such parks shall be responsible for adequate insect control in the camping area such as the periodic spraying for mosquitoes.

N. Cut-off, overnight lighting for all bathhouses and centralized water sources shall be required. Reflectors denoting paths to above mentioned structures are recommended. Other minimal lighting should be installed as needed for the safety and comfort of campground residents.

#### 7.13.4 - Campsites for accommodation of independent RVs.

A. RVs shall not be permitted to hook up to electricity or water for occupation on individual lots unless as part of an approved campground or ICD, or O-I master plan.



- B. Density of sites. To prevent intensive site use, and to maintain an aesthetic camping atmosphere, density shall not exceed 15 sites per acre.
- C. RV parking sites material/slope. Each recreational vehicle site with individual parking shall contain at least five inches of crushed gravel leveled to not more than three percent slope.
- D. RV utility islands. Each RV site shall contain, within the utility island, hookups to water, sewer, and electrical service. Utility islands shall be located to the left center of the RV and at the discretion of the campground owner/developer based on the topography of the land.
- E. RV utility islands water/sewer plumbing requirements. Campgrounds with access to a sewage system shall provide that each campsite contain a sewer connection with suitable fittings to permit a watertight junction with the RV outlet. Each sewer connection shall be constructed so that it can be closed, and when not in use shall be capped to prevent escape of odors. All water taps or outlets serving RV campsites shall be of a type compatible with garden hose connections. Sewer and water piping and installation shall be constructed as specified in the North Carolina Building Code.
- F. Electrical outlets. Each RV site shall have access to electrical power. Configuration of power supply needed shall be the decision of the campground owner. However, a recommended one in ten RV sites should have access to 50 amp service. All electrical outlets shall be located in a properly constructed utility island.
- G. Parking dimensions RV sites. Parking dimensions may vary from single auto trailer attached vehicle back-in of 10 × 60 feet to side-by-side arrangements of trailer and auto of 29 feet long and 30 feet wide. Various combinations may be used to accommodate the recreational vehicle and one additional parking place, but dimensions to accommodate trailer width with extended outside awning shall be at least 14 feet. Parking spurs shall be located so that trailer doors face away from interior roads and into the site. Parking for all recreational vehicles and any additional vehicle shall be of a minimum five-inch gravel base.
- H. RV campsite spacing. RV parking sites shall be at least 20 feet apart (this 20-foot area will include any yard, cooking areas, dining areas, and utility island for next RV site), edge-to-edge, and the center of all camping units should be at least ten feet from the edge of the campground road.
- I. Other RV site requirements. Each RV site should have a picnic table or grill within the campsite area. There shall be a total area for both uses, including general yard area, of not less than 400 square feet with a width of not less than 20 feet.
- J. RV dump station. A sanitary dump station built to the requirements of the local health department shall be provided at the entrance to the campground or other location convenient to all campsites. The dump station shall be located so that the left rear of vehicles will slope slightly toward the dump station when connected for emptying.

#### 7.13.5 - Sanitary facilities for accommodation of dependent RVs and tent campsites.

- A. All campgrounds for the accommodation of dependent RVs and tents shall provide sanitary facilities connected to a sewerage system. Whenever possible, these facilities shall be connected to a public sewerage system.
- B. Toilets, lavatories, and bathing facilities shall be provided **as required by the** North Carolina State Building Code.
- C. Toilet facilities shall be plainly marked, separate for each sex, lighted at night, and shall be located no farther than 200 feet from any camp pad.
- D. Toilet facilities may be located in a central building or in two or more buildings according to the size of the campground and location of the campsites in relation to the facilities.
- E. Adequate provisions shall be made for the disposal of dishwater according to the size of the campground. A suggested ratio is one disposal unit per ten campsites.

#### 7.13.6 - Campsites for tents.

Construction of tent pads is not required for pup tents or other small shelters used by backpackers. Provisions for walk-in campgrounds are contained below.

- A. Each tent site should contain a minimum space of 30 × 30 feet. Density shall not exceed ten sites per acre. Tent sites with individual parking arrangements shall contain one automobile parking space at least 20 feet × 10 feet.
- B. Each site should contain a reinforced, fairly level tent pad. The pads shall be approximately 16 × 16 feet to provide maximum flexibility of use, but shall not contain less than an area of 12 × 12 feet. The tent pad shall be a minimum of six inches high and constructed of gravel, crushed aggregate, or equivalent material that will allow run-off from precipitation to flow through the pad. Pads constructed of tamped earth, asphalt or other impervious materials are prohibited. Tent pads in excess of ten percent slope should be leveled. A three-percent slope is preferable.
- C. Provisions for sanitary facilities are the same as for dependent RVs set out hereinabove.

#### 7.13.7 - Walk-in campgrounds.

- A. Camping is prohibited in areas where a source of potable water and access to sanitary facilities is not provided.
- B. Walk-in campgrounds shall have access to potable water within 75 feet of all sleeping areas. In locations where a water supply system is not possible, potable water may be supplied by an approved well with a hand pump or by water from pickup stations.
- C. All walk-in campgrounds shall have access to the use of a toilet facility to be located within 300 feet of each camping space.

#### 7.13.8 - Campsites for mixed uses.

Campgrounds may be developed to provide more than one type of camping site in the same area. When uses are mixed, the highest or most strict standards shall apply to development of the entire campground with the exception of walk-in camping areas in a campground designed for mixed uses. In such a development, walk-in camping shall be separated from other types of campsites so that campfire smoke or noise will not constitute a nuisance to other campers.

#### 7.13.9 - Campground design.

The ideal design for campgrounds is one which will be compatible with the natural features and topography of the tract undergoing development; and one which provides safe, healthful and convenient camping facilities for campground users with minimum land disturbance.

- A. A complete master plan of any new, expanded or altered park shall be submitted to the Town of Black Mountain for approval before construction.
- B. Density shall not exceed 15 sites per acre.
- C. Campgrounds shall be developed to minimize noise, campfire smoke, or trespassing so as not to create a nuisance to abutting properties.
- D. Sanitary and bathing facilities shall be provided per the state building code. Sanitary dump stations built to the requirements of the local health department shall be provided at the entrance to the campground or other location convenient to all campsites. The dump station shall be located so that the left rear of vehicles will slope slightly toward the dump station when connected for emptying.
- E. All campsites shall be limited to a total of one non-RV parking space per site or RV parking space. An additional area for parking of such vehicles shall be provided equal to one parking place for every ten campsites in a common location or spread throughout the campground.

**Section 67.** Section 8.1.1 of Chapter 8 of the Land Use Code is amended to read as follows:

8.1.1 - Purpose.

The purpose of this ~~ordinance~~**chapter** is to protect. . .

**Section 68.** Section 8.1.2 of Chapter 8 of the Land Use Code is amended as follows:

~~Beginning with and subsequent to its effective date, this ordinance shall be~~**A. This chapter is** applicable to all development and redevelopment, ~~including, but not limited to, site plan applications, subdivision applications, and grading projects~~ within the Town of Black Mountain's jurisdiction.

**Section 69.** Subsection 8.1.4(B)(3) of Chapter 8 of the Land Use Code is amended as follows:

3. Land disturbing activity shall not result in a violation of any local ~~ordinance~~**regulations** including but not limited to zoning district requirements and floodplain regulations.

**Section 70.** Subsections 8.1.5(D)(11)-(14) of Chapter 8 of the Land Use Code are amended as follows:

11. Streets, rights-of-way, pedestrian facilities and setbacks shall be designed to minimize impact on steep slope areas of the particular site without compromising the town's ability to provide connectivity, street maintenance, waste management, or fire protection, and must be designed ~~perto~~ the ~~requirements as indicated in approval of the Town of Black Mountain Standard~~**town's fire marshal and Details Manual** ~~public works director~~. . . .

12. ~~All-Whenever a major subdivisions meeting steep slope and hillside criteria and subdivision of ten acres or more must adhere to comply with steep slope and hillside regulations, the conservation subdivision plan guidelines~~**subdivider must apply for a Conservation Subdivision special use permit as provided in - Chapter 7.**

13. Reserved.

14. ~~Issuance of land disturbing permit.~~No land disturbing permit shall be issued for a site plan ~~review~~ or a subdivision ~~review~~ which meets the standards set forth in the definition of hillside area until the site plan review and subdivision plat review have been completed.

**Section 71.** Section 8.3 of Chapter 8 of the Land Use Code is amended as follows:

8.3.1 - Purpose and applicability.

A. . . . This chapter is also ~~provided in order~~**intended** to:

**1.** Provide visual buffering and ~~to~~ enhance the beautification of the town;

**2.** Safeguard and enhance property values and ~~to~~ protect public and private investment;

. . . .  
**5.** Aid in stabilizing the environment by contributing to the process of air purification, ~~ground water~~**groundwater** recharge, . . .

**B.** All new developments (except for infill single-family detached residential uses and duplexes) shall be designed in accordance with the requirements of this chapter. A change of use or expansion of an existing building or parking area also requires compliance with the requirements of this chapter. Where necessary to accommodate creativity in site design, or where conformance with the strict requirements of this chapter are not feasible, the ~~town zoning~~ board of adjustment may modify these requirements ~~throughby granting~~ a variance ~~procedure~~ or as part of a ~~conditional use or~~ special use permit ~~request~~, provided that the type and amount of landscaping or other features are equivalent in effectiveness.

...

#### 8.3.2 - General provisions.

**A.** *Landscaping in the central business district.* The zoning administrator shall review the landscaping requirements of this article with each development proponent or applicant for a building permit in the ~~CB~~**central business** district. Where meeting the requirements of this subchapter is clearly impractical, the ~~board of aldermen~~**town council** may authorize the use of portions of the public rights-of-way for permanent or container plantings. The zoning administrator is authorized to waive specific landscape requirements, or portions thereof, if meeting the requirements will cause insurmountable difficulties for a development proposal in the ~~CB~~**central business** district.

**B.** *Landscape plan contents.* The landscape plan shall contain the following elements, per zoning district or ~~CUP or~~ SUP requirements:

...

#### 8.3.4 - Wall, fence, and berm standards.

**D.(1)(d).** Historic district. Fences or walls in historic districts shall meet the ~~guidelines~~**standards** for the particular historic district in which it is located.

**Section 72.** Subsection 10.1.1(C) of Chapter 10 of the Land Use Code is amended as follows:

**C.** . . . Parking lots abutting residential zoning districts must be screened by an opaque fence or vegetative buffer of at least ten feet in width and a minimum of six feet in height of sufficient density to act as a screen ~~as determined by the zoning administrator..~~

**Section 73.** Section 10.3.1 of Chapter 10 of the Land Use Code is amended as follows:

#### 10.3.1 - Parking surfaces.

...

~~**B.** The durable, dustless surface may be temporarily omitted upon approval of the planning board wherever it can be demonstrated by the property owner or developer that the permanent size, shape, or location of the parking area cannot be determined until the permanent development of the property is accomplished. In those instances where a non-durable, non-dustless surface is approved, the surface shall at all times be maintained in good condition and free from ruts, potholes and vegetation. Failure to properly maintain the area may be cause for the board of aldermen to require the owner to construct a durable, dustless surface. Board of aldermen approval of such a temporary lot will be subject to annual review and only in cases of hardship will the lot be allowed to remain for more than one year.~~

**B. Any person may petition the town for a variance from parking surfaces in accordance with the procedures outlined in Section 1.7.3.**

C. . . . ~~The zoning administrator will consider the terrain, the~~**Terrain**, configuration of the lot, and the anticipated amount of vehicle activity **shall be considered** in making this permitting decision.

D. Use of permeable pavements or other surface technologies are welcome as long as they are maintained in good condition and function, and documentation is provided as to the maintenance program for the parking lot. Use of permeable surfaces may result in a reduction of stormwater ~~BMPs as required by the land use code and at the discretion of the planning director or stormwater administrator.~~**SCMs in accordance with Section 8.2.11.**

**Section 74. Subsection 10.4.1(B) of Chapter 10 of the Land Use Code is amended as follows:**

2. Any sharing of required parking spaces ~~uses~~ located on different parcels shall be ~~guaranteed~~**documented** by ~~a~~ written agreement between the owner of the parking area and the ~~owner of any party seeking to use located on a different parcel and served by the~~ **shared** parking area, **and such agreement shall be recorded in the Office of the Register of Deeds for Buncombe County.**

3. The owner of said lot ~~relinquished~~**will relinquish** his development rights . . .

4. Should the uses change such that the new uses overlap in hours of operation or ~~in~~**increase** demand for the shared spaces. . .

**Section 75. Subsection 10.6.1(B) of Chapter 10 of the Land Use Code is amended as follows:**

B. ~~Ingress-egress~~ **Points of ingress and egress shall be via** openings in concrete, asphalt, rock or other curbing provisions, commonly referred to as curb cuts, ~~as well as other vehicular means of access to and from private property, shall apply in all zoning districts established by this chapter~~ in accordance with the town driveway requirements and the approval of the N.C. Department of Transportation when involving a state road.

**Section 76. Section 10.7.1 of Chapter 10 of the Land Use Code is amended as follows:**

10.7.1 - Off-street parking space requirements.

Off-street parking spaces shall be provided for uses listed below as specified. Any use not specifically listed below shall be ~~categorized into~~**required to meet** the **off-street parking space requirements of that use which** most ~~appropriate area~~**closely resembles the proposed use in character and intensity, as determined** by the ~~determination of the~~ zoning administrator ~~and these regulations shall apply.~~ All parking requirements set forth by this subchapter include provisions for parking for handicapped individuals as stated by any state or federal regulations.

**Section 78. Section 10.8.1 of Chapter 10 of the Land Use Code is amended as follows:**

10.8.1 - Reductions in parking requirements.

Parking requirements may be decreased according to one or more of the following criteria:

A. . . . These protected areas for larger trees can count toward the landscaping and parking lot island requirement of this ~~ordinance chapter.~~

...  
~~D. A project developer may elect to request the town staff to consider a plan for fewer parking spaces than the minimum set forth based on facts, projections, and circumstances submitted as part of technical review for the project. Any such recommendation for a reduction in the parking requirements shall remain subject to review and approval by the zoning board of adjustment.~~

**Section 79.** Subsection 10.10.1(C)(1) of Chapter 10 of the Land Use Code is amended as follows:

1. On-street parking shall not be used to accommodate required parking unless specifically allowed by a ~~conditional or~~ special use permit or unless within the central business district.

**Section 80.** Section 11.1.1 of Chapter 11 of the Land Use Code is amended as follows:

11.1.1 - Streets, driveways and alleys.

...  
B. Streets and driveways connecting to town roads ~~must complete a driveway permit and meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual for approval. All streets must be designed and constructed in conformance with the requirements as indicated in the Town of Black Mountain Standards and Details Manual unless otherwise approved as part of a special use permit or conservation subdivision and with approval by the public works director and fire inspector.~~ **must be designed and constructed in conformance with the Town of Black Mountain Standards and Details Manual.**

C. ~~Streets and driveways connecting~~ **No private drive, street, or driveway shall be constructed to connect to an** NCDOT maintained roads **until NCDOT has issued a** driveway permit ~~and get NCDOT approval prior to construction.~~

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13, Operations, Division of  
Highways 11 Old Charlotte  
Highway  
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~~D. Roads shall be designed in accordance with the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

**E. D.** Arrangement of driveways should be related to adjacent driveways and street intersections. Driveways close to street intersections shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.

**F. E.** . . . Only three homes or less may also use an alleyway as a shared driveway ~~and must meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.~~

~~G. F.~~ See chapter 3.6 for . . .

**Section 81.** Section 11.2.1 of Chapter 11 of the Land Use Code is amended as follows:

11.2.1 - Sidewalks.

**A. Sidewalks are required to be built in conjunction with certain development or redevelopment of properties as set out in section 4.8.7.6 of the Land Use Code.**

**A. B.** Sidewalks shall . . .

~~B. Sidewalks are required in accordance with chapter 4 and must be approved by the public works director or his/her designee.~~

**C. Sidewalks**~~No sidewalk may be constructed~~ within the NCDOT right-of-way ~~must get approval from the NCDOT district engineer prior to construction through~~**until** an encroachment agreement ~~has been approved by the NCDOT district engineer.~~

**D.** An eight-foot-wide greenway trail may be placed instead of sidewalk if consistent with the comprehensive pedestrian master plan ~~and with the approval of the greenways commission.~~

**E.** Sidewalks and greenways must be planned in compliance with the town's comprehensive pedestrian master plan; and should be designed to promote traffic safety.

**Section 82.** Section 11.3 of Chapter 11 of the Land Use Code is deleted in its entirety.

**Section 83.** Chapter 12 of the Land Use Code is deleted in its entirety.

**READ, APPROVED AND ADOPTED**, by a vote of \_\_\_\_\_ to \_\_\_\_\_ on this the 14<sup>th</sup> day of June, 2021.

\_\_\_\_\_  
Larry Harris, Mayor

**ATTEST:**

\_\_\_\_\_  
Savannah Parrish, Town Clerk