



TOWN OF BLACK MOUNTAIN

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

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

MEMORANDUM

To: Town of Black Mountain Planning Board
From: Jennifer Tipton, Senior Admin
Re: Agenda Packet for August 23, 2021
Date: August 13, 2021

The **Town of Black Mountain Planning Board** will meet on **Monday, August 23, 2021, at 6:00 p.m.** electronically via Zoom.

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

1. The proposed agenda;
2. Draft minutes from July 26, 2021;
3. Proposed Text Amendment – Food Trucks;
4. Proposed Text Amendment – Sign Ordinance; and
5. Training with Town Attorney.

Please let Jennifer Tipton know if you are unable to attend this meeting.
jennifer.tipton@townofblackmountain.org or (828) 419-9371.

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the American with Disabilities Act. Should you need assistance or a particular accommodation for this meeting, please inform Jennifer Tipton at (828) 419-9371 or by email at jennifer.tipton@townofblackmountain.org.

CC: Jessica Trotman, Planning Director
Jake Hair, Planner
Ron Sneed, Town Attorney
Anna Stearns



PUBLIC NOTICE

BLACK MOUNTAIN PLANNING BOARD

The Black Mountain Planning Board will meet for their regular meeting scheduled on **Monday, August 23, 2021, at 6:00 p.m.** in the Council Meeting Room at Town Hall, 160 Midland Avenue, Black Mountain, NC 28711. A Zoom link is also provided for anyone wishing to participate but is not able to attend in-person.

There are three ways the public can participate in the meeting:

1. **Attend the meeting in-person at Town Hall.**
2. **Join the meeting through Zoom on your computer or smart device.** *Citizen video feeds will not be enabled. There is no password.

<https://us02web.zoom.us/j/85436677283>

Meeting ID: 854 3667 7283

If you have not used Zoom before on a computer or smart device, you are encouraged to download the application from their website at [Zoom.us/download](https://zoom.us/download) and try it out prior to the meeting. There is no cost associated with the software or attending the meeting and there are toll free number options to dial in to listen live only.

3. **Join the meeting by telephone (listen only).**

Simply call US Toll-free **1-877-853-5247** or US Toll-free **1-888-788-0099**

Meeting ID: 854 3667 7283 followed by the Pound sign (#)

Jennifer Tipton
Senior Admin

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact, Jennifer Tipton at (828) 419-9371 or by email at Jennifer.tipton@townofblackmountain.org

Posted to the Town Bulletin Board 08/02/2021
www.townofblackmountain.org



AVISO PÚBLICO

JUNTA DE PLANIFICACIÓN DE BLACK MOUNTAIN

La Junta de Planificación de Black Mountain se reunirá para su reunión regular programada el **lunes 23 de Agosto de 2021, a las 6:00 p.m.** en la Sala de Reuniones del Consejo en Town Hall, 160 Midland Avenue, Black Mountain, NC 28711. También se proporciona un enlace de Zoom para cualquier persona que desee participar pero no pueda asistir en persona.

Hay tres formas en que el público puede participar en la reunión:

1. **Asistir a la reunión en persona en el Ayuntamiento.**
2. **Únase a la reunión a través de Zoom en su computadora o dispositivo inteligente.**
***Las transmisiones de video ciudadanas no estarán habilitadas. No hay contraseña.**

<https://us02web.zoom.us/j/85436677283>

ID de reunión: 854 3667 7283

Si no ha utilizado Zoom antes en una computadora o dispositivo inteligente, le recomienda descargar la aplicación desde su sitio web en [Zoom.us/download](https://zoom.us/download) y probarla antes de la reunión. No hay ningún costo asociado con el software o asistir a la reunión y hay opciones de número gratuito para marcar para escuchar solo en vivo.

3. **Únase a la reunión por teléfono (solo escuchar).**

Simplemente llame al **número gratuito 1-877-853-5247** o al **número gratuito 1-888-788-0099**

ID de reunión: 854 3667 7283 seguido del signo de libra (#)

Jennifer Tipton
Administrador Senior

La ciudad de Black Mountain se compromete a proporcionar instalaciones, programas y servicios accesibles para todas las personas en cumplimiento con la Ley de Estadounidenses con Discapacidades (ADA). Si necesita ayuda o un alojamiento en particular para esta reunión, comuníquese con Jennifer Tipton al (828) 419-9371 o por correo electrónico a Jennifer.tipton@townofblackmountain.org

Publicado en el Tablón de Anuncios la Ciudad 08/02/2021

www.townofblackmountain.org



**Planning Board Regular Meeting
August 23, 2021**

PROPOSED AGENDA

I. CALL TO ORDER

- Welcome
- Determination of Quorum

II. ADOPTION OF AGENDA

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

III. ADOPTION OF MINUTES

- **Motion:** To adopt the minutes of July 26, 2021 as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Election of Officers
- Proposed Text Amendment – Food Trucks
- Proposed Text Amendment – Sign Ordinance
- Training with Town Attorney

VI. PUBLIC COMMENT

VII. COMMUNICATION FROM PLANNING BOARD

VIII. COMMUNICATION FROM STAFF

IX. ADJOURNMENT

TOWN OF BLACK MOUNTAIN PLANNING BOARD

The Black Mountain Planning Board held its regular meeting on at 6:00 p.m. in Town Hall at 160 Midland Avenue, Black Mountain, North Carolina and electronically via Zoom.

I. CALL TO ORDER

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

Pam Norton, Vice Chair
Shawn Slome
Kathy Phillips
Chas Fitzgerald (arrived late)
Rick Earley (attending via Zoom)

Absent:

Chris Collins, Chair
Lauronda Teeple

Staff:

Jennifer Tipton, Senior Admin
Jessica Trotman, Planning Director
Jake Hair, Planner
Ann Stearns, Town Attorney

The meeting was called to order at 6:00 p.m. and duly constituted and opened for business with a quorum of four (4) regular members.

II. ADOPTION OF AGENDA

Pam Norton made a change to the agenda to move election of officers to the August meeting. Jennifer Tipton noted that Anna Stearns had a small training PowerPoint for the board and it was decided to also add that to the August meeting. Rick Earley made a motion to adopt the agenda as amended. The motion as seconded by Shawn Slome and approved by a vote of 4-0.

III. ADOPTION OF MINUTES

Rick Earley made a motion to adopt the minutes of June 28th as written. The motion was seconded by Kathy Phillips and approved by a vote of 4-0.

IV. OLD BUSINESS

None.

V. NEW BUSINESS

1. Old Toll Road Preliminary Plat Review

Jennifer Tipton went over the items that had been corrected from the sketch plan review. Those items were correcting the setbacks, showing the sewer easement, adding measurements to the T turn-around, and correcting notes for the private drive and fire hydrant. Mr. Newman has elected to leave off the access easement to Brooks Cove Road. Chas Fitzgerald asked if the open space area would be an open lot and it was stated that it would not have to be its own lot and could just be marked as common area.

Brad Howell, 34 Big Bear Trail, did state that Buncombe County has approved the road name of Exum Lane.

Planning Board Regular Meeting
July 26, 2021

The Planning Board went through the major subdivision checklist and found that the preliminary plat meets all of the requirements. Kathy Phillips made a motion to approve the preliminary plat for the Old Toll Road major subdivision. The motion was seconded by Chas Fitzgerald and approved by a vote of 5-0.

2. Village Way Preliminary Plat Review

Jennifer Tipton went over the items that had been corrected from the sketch plan review. Those items include moving the buildable areas on two lots off of the proposed underground stormwater system, determining that the flood data is the most recent available and confirming that the existing greenway does not have an easement but that the developer will grant an easement for the greenway. The Planning Board went through the major subdivision checklist and found that the preliminary plat meets all of the requirements. Chas Fitzgerald made a motion to approve the preliminary plat for the Village Way major subdivision. The motion was seconded by Shawn Slome and approved by a vote of 5-0.

3. Right-of-Way Closure Request – Alexander Street

Jake Hair presented the right-of-way closure request for Alexander Street. All property owners abutting the section requested to be closed have signed the petition. The requested area is approximately 150 feet in length and 40 feet in width. The area currently is wooded and has a fence through a portion of it. The area is not identified on any town plans and does not have any utilities, drainage areas or stormwater control measures.

Anna Stearns explained that when developments are platted, there are roads that are also platted as an offering to the public for transportation use. The dirt underneath the area belongs to the heirs of the developer. There can be a release of interest in using the area as a street and if closed then both sides shift to the center of the road. Easements may be reserved within the closure area and while the property lines would still shift to the middle, the buildable area would only go to the easement line. No obstructions could be placed in the easement area. Several board members expressed concern over closing such a large section of right-of-way, particularly a front street that could potentially connect to another road. There was concern over emergency vehicles and Jennifer Tipton read emails from Fire Chief Scottie Harris and Fire Inspector Charlie Russell who are okay with closing the requested portion. Ms. Stearns also explained that the Town Council will have the final decision as the process for closing a right-of-way is legislative. The Town Council must find that the closure would not be contrary to the public and would not deny reasonable means of ingress and egress to the neighbors. Shawn Slome made a motion to deny the entire closure but to reserve a 20 foot easement in the center to provide width for future pedestrian and vehicular access. The motion was seconded by Kathy Phillips and approved by a vote of 3-2 with Rick Earley and Pam Norton voting against the motion.

VI. PUBLIC COMMENT

Anna Marcel De Hermanas, 404 S Oconeechee Avenue, addressed the Planning Board with her concerns regarding the cutting of trees for development, the percentage of land allowed for development, and water runoff. Ms. De Hermanas said she would like to see a plan addressing these issues. Ms. De Hermanas did provide her notes in writing and they are attached to and made a part of these minutes.

Planning Board Regular Meeting
July 26, 2021

Jessica Trotman spoke briefly to Ms. De Hermanas concerns. The stormwater requirement that the Town has is one of the strictest in the state. The requirement is for post-construction runoff which requires that the water infiltration be the same at the end of the project as it was before the project. The triggering activity is 5,000 square feet. Ms. Trotman did not recommend regulating lot coverage for building as it could come with unintended consequences related to property rights. Attorney Ron Sneed has advised the Town to not pursue a tree ordinance at this time as there is pending legislation in the General Assembly. Anna Stearns said that the session is expected to go to November and at that time there should be some guidance on how to proceed with a possible tree ordinance.

VII. COMMUNICATION FROM PLANNING BOARD

None.

VIII. COMMUNICATION FROM STAFF

Jessica Trotman announced that the RFP for the UDO (unified development ordinance) will close on August 10th and she will have an update at the August meeting.

IX. ADJOURNMENT

Shawn Slome made a motion to adjourn the meeting at 7:33 p.m. The motion was seconded by Chas Fitzgerald and approved by a vote of 5-0.

Prepared by:

Pam Norton, Vice Chair

Jennifer Tipton, Senior Admin

**AN ORDINANCE TO REGULATE MOBILE FOOD VENDORS
OPERATING IN THE TOWN OF BLACK MOUNTAIN**

BE IT HEREBY ORDAINED by the Board of Aldermen that Land Use Code of the Town of Black Mountain is hereby amended as follows:

Section 1: Section 1.2 of Chapter 1 of the Land Use Code is hereby amended by inserting the following definition:

Mobile food vendor: means a person who sells prepared food from a vehicle or cart that is not permanently affixed to the site of sale and can be readily transported to and from that site.

Section 2: Chapter 5 of the Land Use Code is hereby amended by inserting the following new section 5.24:

5.24 Mobile Food Vendors

- A. It shall be unlawful for any mobile food vendor to sell or offer for sale any food or beverage without first obtaining a permit pursuant to this section.
1. A permit application shall be obtained from the planning and development office.
 2. The application must be complete and must include:
 - a) written documentation of the property owners' permission to operate on the site;
 - b) confirmation that the property owners or sponsoring adjacent business(es) will make their restroom facilities available for mobile food vendor staff.
 - c) a copy of a valid Health Department Permit.
 3. Permission to utilize public parking or sidewalk areas must be approved by the Town Manager and at the request of a sponsoring business owner adjacent to the proposed location.
- B. Once approved, the permit issued pursuant to this section is valid only for the location listed on the permit. Vendors who serve at multiple locations must obtain individual permits for each site.
- C. Mobile food vendors may operate in any commercial, industrial, mixed-use or business district for a period of not more than one hundred twenty (120) days in any calendar year.

- D. A mobile food vendor must present written documentation of the property owners' permission and a copy of its Health Department Permit at the time of application.
- E. No mobile food vendor shall:
 - 1. Leave a mobile food unit or pushcart unattended, or store, park or leave a mobile food unit or pushcart overnight within any public right-of-way or public property.
 - 2. Leave any location without removing and disposing of all trash or refuse.
 - 3. Pour waste products (including hot water or drainage from coolers) down a storm drain.
 - 4. Operate within fifty (50) feet of an existing restaurant during the restaurant's business hours.
- F. Each mobile food vendor must obtain and display an approved mobile food service permit from the Buncombe County Health Department.
- G. Signage associated with the operation of a mobile food vendor must comply with the requirements of the sign ordinance (Chapter 9 of this code).
- H. Exhaust outlets shall be located not less than ten (10) feet from any structure or building.

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: Black Mountain Planning Board

From: Planning Staff

Date: August 23, 2021

Subject: Proposed Text Amendment

Description: Add provisions and rules for food trucks

Address: N/A

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

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

How consistent with plan: _____

Why is it reasonable and in the public interest: _____

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

How inconsistent with the plan: _____

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

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

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

Sign: *Sign:* Any device, structure, fixture, painting, or visual image using words, graphics, symbols, numbers, or letters designed and used for the purpose of attracting attention or communicating a readable, comprehensive, legible message. Signs may not contain obscenity as defined in N.C.G.S. Sec. 14-190.1 [\[2\]](#)

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

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: Black Mountain Planning Board

From: Planning Staff

Date: August 23, 2021

Subject: Proposed Text Amendment

Description: Update sign ordinance definitions

Address: N/A

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

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

How consistent with plan: _____

Why is it reasonable and in the public interest: _____

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

How inconsistent with the plan: _____

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

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

CHAPTER NINE - Signs.

9.1. Intent.

Signs are a necessary and beneficial use of property that contributes to our community's economic vitality and appearance. Reasonable sign regulations are necessary to protect public property and community aesthetics, encourage economic activity, and contribute to the overall appeal of the community. It is the intent of this section to regulate the use, size, layout, style, typography, legibility, and arrangement of signs to ensure that signs are compatible with their surroundings, appropriate to identify individual properties, occupants, and/or the community, and facilitate the safe and orderly flow of pedestrian and vehicular traffic. Specifically, this section is intended to:

- (a) Promote the public health, safety, and welfare of residents and visitors;
- (b) Provide an environment which fosters growth and development of a vibrant business community;
- (c) Protect commercial and industrial districts from visual clutter;
- (d) Protect property values;
- (e) Eliminate distractions which are hazardous to motorists and pedestrians;
- (f) Protect and enhance the natural beauty, cultural attributes, distinctive character, and visual environment of the Town of Black Mountain;
- (g) Protect the public's ability to identify establishments and premises in an orderly, readable and safe manner;
- (h) Protect the public's investment in public buildings, streets, roads, highways, and open spaces; and
- (i) Balance the individual rights of property owners to communicate their message with the public's right to be free of unreasonable distractions and aesthetic intrusions.

9.2. Applicability.

- A. No sign visible from the public right-of-way, whether exterior to or interior to a structure, shall be erected, displayed, or substantially altered on any lot zoned or used for non-residential use, except in accord with the provisions of this Chapter and until a zoning compliance permit has been issued for the sign.
- B. Pursuant to N.C.G.S. 160D-908, fence wraps displaying signage affixed to perimeter fencing at a construction site are exemption from the requirements of this chapter for up to 24 months or until the certificate of occupancy is issued for the final portion of construction, whichever is shorter. This exemption will not apply to fence wrap that displays advertising other than by a person or company directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required.
- C. Recognizing that certain signs and messages are required to be displayed by federal or state law or regulation, and further recognizing the many benefits of certain commonly occurring signage that promote local economic activity, civic events and political discourse, many of which are of a temporary nature, the following types of signage are allowed in any district without need for obtaining a permit, provided that the specific requirements listed below, if any, are met:
 1. Any sign required by law, including emergency, safety, warning or traffic signs or any sign installed by, at the direction of, or with the approval of a governmental authority.
 2. Signs bearing only property identification numbers and names, post office box numbers, names of occupants of the premises on which the sign is located, provided that:
 - a. the sign is not illuminated and does not exceed 2 square feet in area per display surface, and
 - b. no more than 2 such signs are displayed on the zoning lot.

3. Local, state, or national flags, including flags of foreign nations having diplomatic relations with the United States.
4. Signs erected and maintained by public agencies and governmental bodies.
5. Historical markers erected or placed by a historical nonprofit corporation or governmental authority.
6. Signs directing and guiding traffic and parking on private property on which the signs are located, provided that such signs:
 - a. are not illuminated,
 - b. bear no advertising, and
 - c. do not exceed 4 square feet in area per display surface.
7. Construction site identification signs whose message is limited to the project or building name, identification of architects, engineers, contractors, lenders and other individuals or firms involved with the construction, the intended purpose of the building and the expected completion date, provided that such signs:
 - a. may not exceed 4 square feet in area per display surface and 6 feet in height for single-family or duplex construction;
 - b. may not exceed 32 square feet in area per display surface and 8 feet in height for multifamily or non-residential construction;
 - c. such signs shall not be illuminated;
 - d. no more than one (1) such sign shall be allowed per construction site;
 - e. no such sign shall be erected prior to issuance of a building permit for the site; and
 - f. such sign must be removed within seven (7) days of the issuance of a certificate of occupancy.
8. Real estate signs advertising the sale, rental, or lease of the premises, provided that such signs:
 - a. Do not exceed 1 sign per street frontage and 4 square feet in area per display surface for property zoned residential; and
 - b. Do not exceed 1 sign per street frontage and 16 square feet per display surface for property zoned non-residential or located within an approved planned development; and
 - c. such signs shall not be illuminated.
9. Residential property management sign permanently affixed to the building façade, which includes contact information for the management company, provided that such signs:
 - a. Do not exceed 1 sign per building façade and 4 square feet in area per display surface; and
 - b. Are attached to a residential structure with seven (7) or fewer dwelling units.
10. Temporary political signs, provided that such signs:
 - a. Do not exceed four (4) square feet in area per display surface;
 - b. Are located on private property or within a public right of way;
 - c. When placed within a public right-of-way, must comply with the following additional requirements:
 - i. May not be placed more than 30 days before the beginning of early voting pursuant to N.C. Gen. Stat. § 163-227.2;

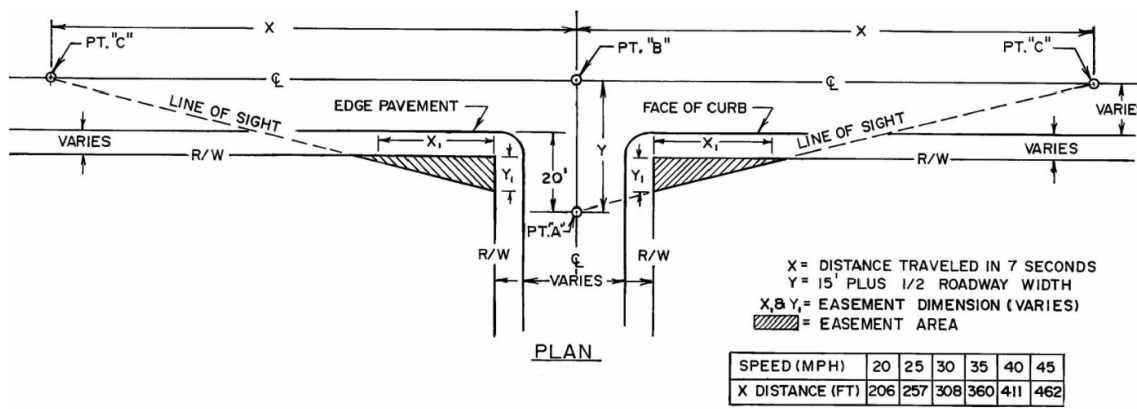
- ii. The candidate must obtain the permission of any property owner of a residence, business, or religious institution fronting the right-of-way where the sign would be placed;
 - iii. No sign is permitted within the right-of-way of a fully controlled access highway;
 - iv. No sign may obscure motorist visibility at an intersection;
 - v. No sign may be greater than 42 inches in height above the edge of the pavement of the road;
 - vi. No sign may be large than 18 by 24 inches;
 - vii. No sign may obscure or replace another sign.
 - d. Are removed within ten (10) days following the primary or general election, as applicable;
11. Signs announcing yard or garage sales, provided that such signs:
- a. Do not exceed one (1) sign per site of the sale;
 - b. Do not exceed four (4) square feet in area per display surface; and
 - c. Are removed within 7 days of posting.
12. Announcements by public or nonprofit organizations of special events or activities of interest to the general public, provided such signs:
- a. Do not exceed one (1) sign per site of such events or activities; and
 - b. Do not exceed 12 square feet in area per display surface; and
 - c. Are removed within 14 days of posting.
13. Information kiosks or bulletin boards erected by or on behalf of a governmental body on public property or rights-of-way in the Town Business Districts for the display of handbills or posters of community interest, provided such kiosks or bulletin boards:
- a. Contain no more than 6 square feet in area per sign display surface and a maximum of 72 square feet per kiosk or bulletin board.
14. A sign held by or attached to a human, located in front of the business, during business hours, for the purposes of advertising or otherwise drawing attention to an individual, business, commodity, service or product. This may also include a person dressed in costume for the purpose of advertising or drawing attention to an individual, business, commodity, service or product.
15. Signs on registered, licensed vehicles that are parked in a manner that serves the purpose of advertising a business, is generally located in front of the business, and is parked in a standard size parking space.
16. Signs stating that a business (other than a home occupation) is open, provided that there is no more than one such sign per business establishment, any illumination is steady (does not blink or flash), and the sign does not exceed 2 square feet in display area.

9.3. *Prohibited Signs.*

The following types of signs are prohibited:

- A. *Moving signs.* Animated, rotating, or other moving or apparently moving signs, including vehicular billboards.
- B. *Wind signs.* Devices consisting of banners, streamers, pennants, wind-blown propellers, balloons, inflatable devices, strung light bulbs and similar installations.

- C. *Digital changeable copy.* Digital changeable copy that scrolls, blinks, or flashes, including but not limited to LCD, LED and any similar technology, except as used to display time and temperature or gas price.
- D. *Traffic safety precautions.* Notwithstanding any other provision in this Chapter, the following restrictions shall apply to signs in order to preserve the safety of pedestrian, bicycle, and vehicular movement:
1. No sign may make use of the words "STOP", "SLOW", "CAUTION", "DANGER", or any other word, phrase, symbol or character in such manner as is reasonably likely to be confused with traffic directional and regulatory signs.
 2. Except as used to display time and temperature, no sign may contain flashing lights.
 3. No sign, or part of a sign, may be located within a sight distance area established below.
 4. No sign may be erected so that by its location, color, nature or message it is likely to be confused with or obstruct the view of traffic signals or signs, or is likely to be confused with the warning lights of an emergency or public safety vehicle.



9.4 General Standards.

- A. *Location.* Except where expressly exempted in this Section, all signs must be located on the same lot as the permitted use and be clearly incidental, customary and commonly associated with the operation of the permitted use.
- B. *Cessation or vacation of use.* When the use or establishment to which a sign is related ceases or is vacated, any sign, including all of its supports, frames and hardware, must be removed within 4 months of the cessation or vacating of the use or establishment unless the sign is used by a new use or establishment on the premises in conformance with all current regulations of this Chapter.
- C. *Signs in the Right-of-Way.*
1. Signs must not encroach into the public right-of-way unless expressly allowed in this Chapter.
 2. Wall signs, awning signs, canopy signs, projecting signs, crown signs and shingle signs may encroach over the public sidewalk but must not encroach on or over any streets or alleys. All signs must be a minimum of 24 inches inside the curb line or edge of pavement, whichever is greater.
 3. No sign may be attached, affixed, or painted on any utility pole, light fixture, tree, rock or other natural object within the right-of-way.
- D. *Unified sign plan.*
1. Where a zoning lot contains more than 3 principal uses or establishments, the provisions of this Section apply to the zoning lot as a whole, and the owners of the zoning lot are

responsible for allocating permitted signs and display surface area among the individual uses or establishments.

2. A unified sign plan is an overall plan for placement and design of multiple signs for a building or group of buildings on a zoning lot.
 3. The unified sign plan submitted for a zoning lot must show all signs located or proposed on the zoning lot.
 4. The unified sign plan must display harmony and consistency with regard to number and size of signs, placement of signs, materials and color, size and style of lettering, and type of sign illumination.
 5. Unified Sign Plans are not required in Central Business or Mixed-Use Zoning Districts.
- E. *Address on ground signs.* The street address number must be included on all ground signs. Numerals must be at least 9" in height. The area of the address is not included in any calculation of total sign area.
- F. *Pre-existing, nonconforming signage.* Any sign in place prior to adoption of this Ordinance that does not comply with the standards of this Chapter for size, location, height or sign type is considered a pre-existing, nonconforming sign that may be continued, maintained, repaired, or replaced if damaged or destroyed, provided that the nonconformity is not in any way enlarged or intensified.

9.5. Permitted Signs

Sign Type	UR-8, TR-4, CR-1,SR- 2,NMU- 8	CB,HB- 8,TND	HI- 0,OI-6, LI-8, ICD	Sign Area Allocation (max)
	p*	P	P	Maximum 5% of the building facade up to and including the fourth floor, for all of these sign types combined. No individual sign shall exceed 250 sq. ft. in area
	p*	P	P	
	p*	P	P	
	p*	P	P	

		p*	P	P	Based on sign area
		—	P	P	Maximum 2.5% of the building facade (in addition to other building signs)
		—	p*	P	Based on sign area
		p*	P	P	
		p*	P	P	
		P	p**	P	

KEY: P = Sign type permitted P* = For allowed nonresidential uses only

P** = For residential identification sign only — = Not Permitted

A. *Wall sign.*



Description

A wall sign is a sign attached to or painted on a wall or building, with the exposed display surface of the sign in a plane parallel to the plane of the wall to which it is attached or painted, including signs affixed to or otherwise displayed on or through a facade window.

Standards

1. No portion of a wall sign may extend above the roof line or above a parapet wall of a building with a flat roof. No portion may extend above the lower eave line of a building with a pitched roof. The sign must not cover windows or architectural details.
2. Wall sign area includes signs visible from the outside that are located inside the building within 5 feet of the window.
3. For a cinema or theater, may be constructed as a marquee that extends less than 10 feet from the building and is at least 10 feet above the sidewalk (or finished grade where there is no sidewalk).
4. May be externally or internally illuminated in accordance with Sec. 9.9.9.



Dimensions				
		CB,HB-8,TND	UR-8, TR-4, CR-1,SR- 2,NMU-8	HI-0,OI-6, LI-8, ICD
Ⓐ	Display surface, building identification (max)	16 SF	limited by 5.14.7	40 SF
Ⓑ	Display surface, each establishment (max)	—	—	15 SF
Ⓒ	Projection from building facade (max)	12"	12"	12"
Ⓓ	Raceway (max % of letter height)	35%	35%	35%
Ⓔ	Height (max)	54'	54'	54'
Ⓕ	% of each window area (max)	15%	15%	15%
Number of Signs				
1. In the UR-8, TR-4, CR-1, SR-2, NMU-8 Districts, maximum 1 wall sign per street frontage.				

2. In all other districts, maximum of 3 wall signs per individual establishment per street frontage. Window signage shall not be counted towards the maximum number of wall signs.

B. Awning Sign.



Description
A sign where graphics or symbols are painted, sewn, or otherwise adhered to the awning material as an integrated part of the awning itself.
Standards
1. Sign must not extend outside the awning. 2. Signs are permitted on the sloping face of the awning. 3. Not allowed above the ground story. 4. May only be externally illuminated in accordance with Sec. 9.9.9.



Dimensions		
(A)	Display surface (max)	Limited by 5.14.7
(B)	Width (max % of awning width/depth)	75%
(C)	Height of message (max. on front or side; no limit on height on sloping valance)	12"
(D)	Clearance height above sidewalk (min)	10'
Number of Signs		
1. A maximum of 1 sign per front, side, or sloping valance.		
2. Awning sign may be on either: a) the front, side; or b) sloping valance.		

C. Canopy Sign.



Description
A sign placed at the front edge of a canopy so that the display surface is parallel to the plane of the front building facade or parallel to the plane of the canopy.
Standards
1. Must not extend outside the overall length or width of the canopy, however, may extend above or below the canopy, provided the clear height is met. 2. Raceways are permitted for signs extending below or above the canopy. Otherwise, raceways are not permitted and the sign must be flush with the canopy face. 3. May be externally or internally illuminated in accordance with Sec. 9.9.9.



Dimensions		
Ⓐ	Width (max % of canopy width)	75%
Ⓑ	Height of text and graphics (max)	2'
Ⓒ	Depth (max)	1'
Ⓓ	Raceway (max % of letter height)	35%
Ⓔ	Clear height above sidewalk, canopy and sign (min)	10'
Number of Signs		
1. A maximum of 1 sign is permitted per canopy.		

D. *Projecting Sign.*



Description
A sign applied to or mounted to the wall or surface of a building or structure, with a display surface that projects 12 inches or more from the outside wall of the building or structure.
Standards
1. May be erected on a building corner when the building corner adjoins the intersection of two streets. Allocation allowed per section 5.14.7, of sign area from both frontages may be used for a corner projecting sign, provided it does not exceed the allowed height and width. 2. No portion may extend above the roof line or above a parapet wall of a building with a flat roof. No portion may extend above the lower eave line of a building with a pitched roof. 3. May be externally or internally illuminated in accordance with Sec. 9.9.9.



Dimensions		
Ⓐ	Height (max)	
	Mounted below 2nd floor	4'
	Mounted between 2nd and 3rd floor	8'
	Mounted between 3rd and 4th floor	12'
Ⓑ	Distance from building facade (max)	2'
Ⓒ	Projection width (max)	4'
Ⓓ	Depth (max)	12"
Ⓔ	Clearance height above sidewalk (min)	10'
Number of Signs		
1. Maximum 1 projecting sign per individual establishment per street frontage. 2. Must be located at least 25 feet from any other projecting sign or shingle sign. 3. Not allowed on a zoning lot with a commercial center or ground sign, unless signs are located on different street frontages.		

E. *Shingle Sign.*



Description
A small projecting sign that hangs from a bracket or support and is located over or near a building entrance.
Standards
1. Must be located within 5 feet of an accessible building entrance. 2. Hanging bracket must be an integral part of design. 3. Must be located below the window sills of the 2nd story on a multi-story building or below the roof line on a 1-story building. 4. May be externally or internally illuminated in accordance with Sec. 9.9.9.



Dimensions		
Ⓐ	Display surface (max)	9 SF
Ⓑ	Height (max)	3'
Ⓒ	Spacing from building facade (min/max)	6"/12"
Ⓓ	Projection width (max)	3'
Ⓔ	Depth (max)	6"
Ⓕ	Clear height above sidewalk (min)	10'
Number of Signs		
1. Maximum of 1 shingle sign or projecting sign per individual establishment per street frontage. 2. A shingle sign must be located at least 25 feet from any other shingle sign or projecting sign.		

F. *Crown Sign.*



Description
A wall sign extending not more than 3 feet from the building facade located on the upper horizontal band of a building at least 55 feet and 4 stories in height.
Standards
1. Only permitted on buildings at least 55 feet and 4 stories in height. 2. Must not be placed below the start of highest floor or extend above the roof line. 3. Must not cover windows or architectural details. 4. May only be internally illuminated in accordance with Sec. 9.9.9.

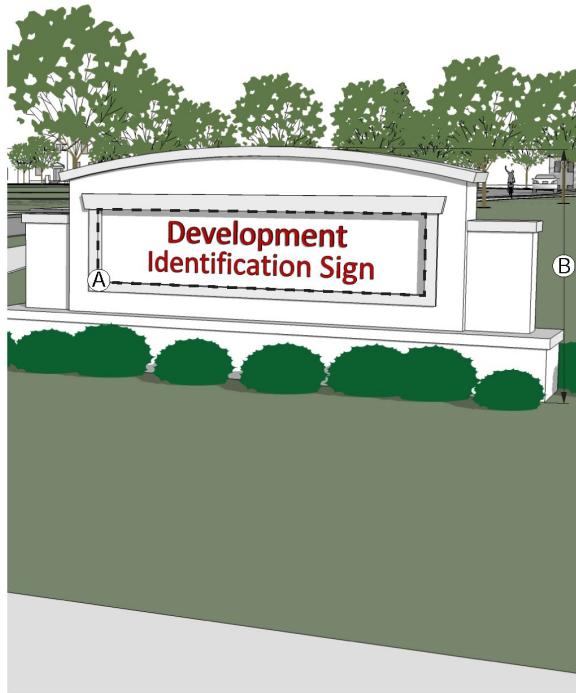


Dimensions		
Ⓐ	Display surface (max)	250 SF
Ⓑ	Height (max)	8'
Ⓒ	Projection - measured from building facade (max)	3'
Ⓓ	Width (max % of facade width)	75%
Ⓔ	Raceway (max % of letter height)	25%
Number of Signs		
1. No more than 1 sign per building facade and no more than 2 signs per building. 2. No more than 1 tenant or building may be identified on the sign per building facade.		

G. *Development Identification Sign.*



Description
A permanently affixed sign which is wholly independent of a building for support attached along its entire width to a continuous pedestal that is used to identify entry to a development.
General Provisions
1. Signs taller than 6 feet must be set back at least 10 feet from the front property line and 15 feet from a side property line. 2. Must not conflict with any clear sight triangle. 3. Must be constructed of brick, stone, wood, metal or glass. 4. May contain the name and logo of the development and one anchor tenant. 5. May be externally or internally illuminated in accordance with Sec. 9.9.9.



Dimensions				
		CB,HB-8,TND	UR-8, TR-4, CR-1,SR-2,NMU-8	HI-0,OI-6, LI-8, ICD
A	Sign area (max, single side only)	16 SF	20 SF	40 SF
B	Sign area (max each, if two sides)	8 SF	—	20 SF
C	Sign area (max, for development with a cinema, single side only)	—	—	80 SF
D	Height (max)	6'	6'	8'
Number of Signs				
1. In all other districts, 2 development identification signs are allowed per primary entrance, one on each side.				

H. Commercial Center Sign.



Description

A commercial center sign is a free-standing sign attached to a contiguous structural base or planter box permanently affixed to the ground. Commercial center signs do not include free-standing signs supported by poles.

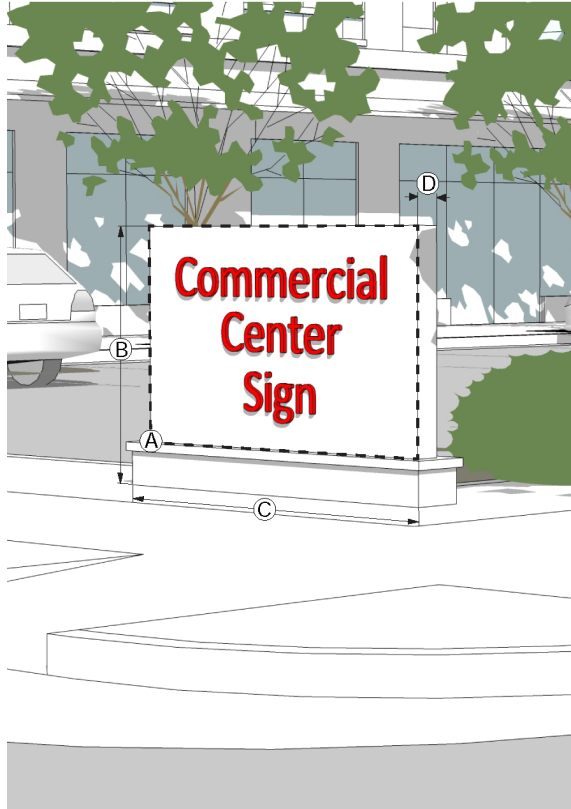
Standards

1. Allowed for commercial centers, defined as a center with a minimum of 4 retail business tenants and 8,000 SF of retail business floor area.
2. The Commercial Center must have 100 feet of street frontage minimum. Street frontage for a zoning lot includes frontage on streets that are part of an approved master land use plan or special use permit and have speed limits of 35 mph or greater.
3. Sign must be located at least 250 feet from any other Commercial Center Ground Sign.
4. Minimum 9" letter height for all text.
5. The display surface area of the sign must be divided into individual tenant name panels. The panels within the display area may be of 2 different sizes and must be of a similar shape.
6. May be externally or internally illuminated in accordance with Sec. 9.9.9. Illumination of the sign is not permitted during non-business hours.

Dimensional Deviations

1. A dimensional deviation of 12 inches or less may be applied to the Commercial Center Sign dimensional standards, provided the resulting sign does not exceed the maximum height and maximum display area standards.
2. For signs located at the edge of the right-of-way, the overall height of the base of a sign located along a roadway with a speed limit of 45 mph may be increased by 1 inch for every 2 feet the sign is set back from the edge of the closest travel lane. The overall height of

the sign may not be increased beyond the maximum height limit by more than 3 feet.



Dimensions			
		CB,HB-8,TND, HI-0,OI-6, LI-8, ICD	
		Street up to 35 MPH	Street 35 MPH +
Ⓐ	Sign structure plus display surface (max)	120 SF	144 SF
Ⓑ	Display surface only (max)	50 SF	72 SF
Ⓒ	Height (max)	12'	14'
Ⓓ	Width (max)	10'	10'
Ⓔ	Thickness (max)	12"	12"
Number of Signs			

1. Maximum 1 commercial center sign per street frontage per Commercial Center.

I. *Ground Sign.*



Description
A ground sign is a free-standing sign attached to a contiguous structural base or planter box the same width or greater than the message portion of the sign, permanently affixed to the ground. Ground signs do not include free-standing signs supported by poles.
Standards
1. The commercial developments must have a minimum 100 feet of street frontage to qualify for a ground sign (for smaller lots, see Cantilevered Ground Sign). Lot must be accessible by automobile and contain off-street parking for the principal use. 2. Buildings housing principal uses must be located at least 20 feet back from abutting right-of-way. 3. Sign must be set back at least 10 feet from the front property line and 15 feet from a side property line. 4. Sign must be located at least 150 feet from any other Ground Sign. 5. Minimum 9" letter height for all text. 6. May be externally or internally illuminated in accordance with Sec. 9.9.9.



Dimensions				
	UR-8, TR-4, CR-1,SR-2,NMU-8		CB	All Other Districts
Ⓐ	Display surface (max)*	16 SF	8 SF	15 to 30 SF**
Ⓑ	Height (max)	6'	8'	8'
Ⓒ	Width (max)	10'	10'	10'
Ⓓ	Thickness (max)	12"	12"	12"
* Area associated with the text of a building name or address is exempt from maximum display surface calculation. * Display surface max. is per display area.				
Number of Signs				
1. In the UR-8, TR-4, CR-1,SR-2,NMU-8 Districts, maximum 1 ground sign per lot. 2. In all other districts, maximum 1 ground sign per street frontage. 3. No ground sign is permitted on the same zoning lot with a projecting sign, unless signs are located on different street frontages.				

J. *Cantilevered Ground Sign.*



Description
A permanently affixed sign which is wholly independent of a building for support where the primary support is supplied by a post and the sign hangs from a bracket or support.
Standards
1. No minimum street frontage required. 2. Buildings housing principal uses must be located at least 20 feet back from abutting right-of-way. 3. Must be set back at least 5 feet from the front lot line and 5 feet from a side lot line. 4. Hanging bracket must be an integral part of design. 5. Sign must be located at least 25 feet from any other ground sign. 6. May be externally or internally illuminated in accordance with Sec. 9.9.9.



Dimensions		
Ⓐ	Display surface (max)	9 SF
Ⓑ	Support height (max)	10'
Ⓒ	Sign height (max)	6'
Ⓓ	Display surface height, width (max)	3'
Number of Signs		
1. 1 cantilevered ground sign per street frontage. 2. No cantilevered ground sign permitted on same zoning lot as a projecting sign.		

9.6. Specialty Sign Types.

A **Sidewalk Sign**. A sidewalk sign is a movable sign not secured or attached to the ground or surface upon which it is located. This sign type is typically an A-frame or spring-mounted sign.

1. A sidewalk sign is permitted in the Central Business District **and Highway Business**.

2. A sidewalk sign must be no more than 42" tall and 36" wide. The sign face must be no more than 6 square feet in area.
3. There may be no more than 1 sidewalk sign per tenant, generally located adjacent to the primary facade in front of the business.
4. A sidewalk sign must not obstruct vehicular, bicycle or pedestrian traffic, and must comply with ADA clearance and accessibility requirements.
5. The sign must be removed and placed indoors at the close of each business day.
6. No illumination is permitted.



B. *Parking Lot Identification Banners.*

- a. Each parking lot identification banner must not exceed 4 square feet in display area, and must be limited to the name of the building or development.
- b. One or two banners may be approved for display from each street light.
- c. The colors, shape, materials, appearance and duration of display for such banners must be approved by the Town Manager.

C. *Gas Stations.*

1. ***Pumps.*** Signs located on the top of gas pumps (pump toppers) must comply with the following standards:
 - a. Gas stations may install one pump topper per pump.
 - b. Pump toppers are limited to a maximum of 6 square feet per side and no more than 2 sides per pump.
 - c. The base of the pump must be a neutral color, and must not contain any signage.
 - d. No internal illumination of the pump or pump topper is allowed.
2. ***Canopies.*** Gas station canopy signs must comply with the following standards:
 - a. The sign must be an integral component of the pump canopy (composed of lettering mounted, painted or otherwise affixed to the pump canopy, and not located on the top or bottom of the canopy).

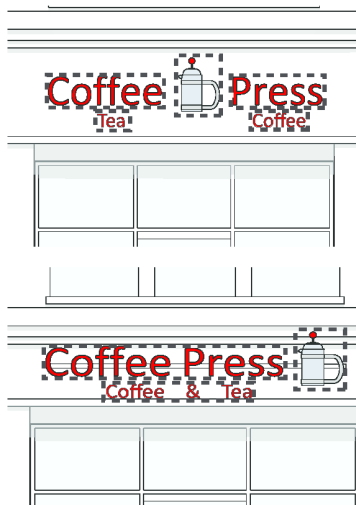
- b. The features, materials, colors and designs used in the pump canopy must be similar to the principal structure. Such features are considered similar where the materials and colors of the canopy are the same as the predominant materials and colors of the principal structure.
- c. Each canopy sign may not exceed 4 square feet of display area. The maximum letter height or trademark height must not exceed 18 inches.
- d. Additional canopy sign area may be permitted by transferring building sign display area. If building sign display area is transferred, one canopy sign is permitted on each side of a canopy, up to a maximum of three sides.
- e. The canopy must not encroach upon any publicly dedicated rights-of-way.
- f. No internal canopy illumination is permitted.

3. *Digital Gas Price Display.* Gas prices may be displayed as digital (electronic) changeable copy.

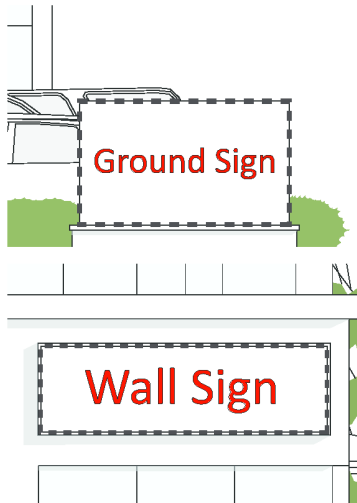
9.7. Sign Measurements.

A. *Computation of Sign Area.* The area of all signs is determined as follows:

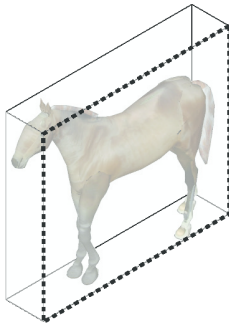
- 1. For wall signs, awning signs, canopy signs and crown signs consisting of freestanding letters or logos, sign area is calculated as the total area of the rectangle, circle or square that fully encloses all the letters or logo.



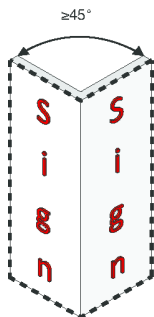
- 2. For signs on a background, the entire area of the background is calculated as sign area, including any material or color forming the sign face and the background used to differentiate the sign from the structure on which it is mounted. Display surface includes the face of the structure that the message is affixed to. Display surface does not include any structural members not bearing advertisement.



3. The sign area of a three-dimensional sign is calculated as total area of the smallest rectangle, circle or square that fully encloses the largest profile of the three-dimensional sign.



4. The area for a sign with more than one face is calculated by adding the area of all sign faces that are 45 degrees or greater; where the sign face angle is less than 45 degrees only the area of the largest sign face is computed as part of the sign area.



B. *Measurement of Sign Height.*

1. The total height of a sign is measured from the highest point of the sign or supporting structure to the top of the abutting sidewalk (or the crown of the adjacent roadway where no sidewalk exists).



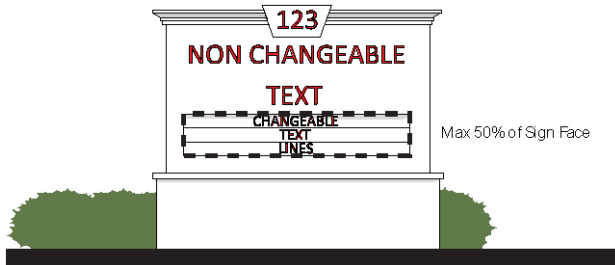
C. *Measurement of Sign Height: Commercial Center Sign.*

1. The height of a Commercial Center Sign is measured from the mean natural grade.
 2. Mean natural grade is measured along a line parallel to the street frontage for a distance of 100 feet on either side of the base of the sign, and along a line perpendicular to the street starting at the right-of-way for a distance equal to the width of the proposed sign.
 3. Where the proposed location of the sign is below the natural grade of the adjacent street frontage, the overall height of the base of the sign may be increased by up to 10 feet in order to achieve the maximum permitted height, as measured from the natural grade of the adjacent street frontage.
 4. Landscaping around the base of a sign must be shown on a landscape plan. The landscaping must buffer and screen that portion of the base of the sign located below the natural grade of the adjacent street frontage.
 5. The design of the base of the sign must complement the features and frame of the sign.
 6. In those situations where compliance with Federal Emergency Management Agency (FEMA) floodplain regulations prohibits the installation of a contiguous structural base, the Town Manager may approve an alternate base design. Landscaping and screening must be incorporated into the alternate base design.
- D. *Sign Setback.* Signs required to be set back are typically measured from the property line. However, in instances where the property line is adjacent to a drainage area or other right-of-way that may reasonably be anticipated to exist in the future, the Town Manager may allow the sign to be placed at the property line without any setback.
- E. *Sign Maintenance.* All signs must be maintained in good condition and present a neat and orderly appearance. Failure by the owner or tenant to remove poorly maintained signs may result in enforcement action by the Town. The Town Manager may cause to be removed (after due notice) any sign which shows gross neglect, becomes dilapidated, or if the ground area around it is not well maintained.

9.8. *Changeable Copy.*

- A. *Defined.* A sign or portion of a sign that has a readerboard for the display of text information in which each alphanumeric character, graphic or symbol is defined by objects (not consisting of an illumination device) that may be changed or re-arranged manually or mechanically without altering the face or the surface of the sign.

1. Manual changeable copy is allowed in conjunction with a permitted commercial center sign, ground sign or marquee wall sign only.
2. The manual changeable copy portion of the sign may be no greater than 50% of the total sign area on each display face.



3. No electronic or digital changeable copy is allowed, except for digital time and temperature signs and gas price signs at gas stations.

9.9. Sign Illumination.

A. *Prohibited Light Sources.* The following light sources are not permitted:

1. Blinking, flashing, chasing or scrolling.
2. Bare bulb illumination that exceed 0.3 foot candles at the property line.
3. Colored lights used in any manner so as to be confused with or construed as traffic control devices.
4. Direct reflected light that creates a hazard to operators of motor vehicles.

B. *Brightness.* The light from any illuminated sign must not be of an intensity or brightness that will interfere with the comfort, convenience and general welfare of residents or occupants of adjacent properties. Brightness must not exceed Town maximum foot-candle standards.

C. *Internal Illumination.*

1. Internal illumination is not allowed in the **CR-1, NMU, SR-2, UR-8, TR-4 Districts**.
2. Channel letters may be internally lit, halo lit or back-lit.
3. For internally illuminated signs, the background must be opaque or a substantially darker color than the sign message.
4. Light emitting diodes (LED)'s are permitted as a light source only where the LED is behind an acrylic, metal or similar sign face and returns in such a manner that the LED modules are not visible from the exterior of the sign.
5. Internal illumination for shingle and cantilever signs is limited to the text, letter or logo. The background may not be internally or externally illuminated.
6. The letter or message of internally illuminated signs must consist of non-reflective materials.



External light sources



Internally lit channel letters



Back lit channel letters



Internally lit cabinet signs with darker background

D. *External Illumination.*

- (1) Lighting directed toward a sign must be shielded so that it illuminates only the face of the sign and does not shine directly onto public right-of-way or adjacent properties.
- (2) Flood lights or spotlights near the top of a sign must be focused downward onto the sign. Floodlights or spotlights must be aimed such that the entire beam falls within the intended area of the sign to be lit.

E. *Raceways and Transformers.*

- (1) If a raceway is necessary, it must not extend in width or height beyond the area of the sign.
- (2) Raceways must be finished to match the background wall or canopy, or integrated into the overall design of the sign.
- (3) Visible transformers are not permitted.

5.14.13 *Guidelines for Administrative Adjustment of Signage Regulations.*

Intent: The intent of permitting the administrative adjustment of the Sign Ordinance standards is to provide for flexibility that is compatible with the Town of Black Mountains character; to acknowledge the artistic creativity of sign makers, business owners, and individuals; to create visual harmony between the sign, structure, and site where the sign is located; and to enhance retail areas consistent with the Elevate Black Mountain Comprehensive Plan and subsequent small area plans, development agreements, and form-based district codes.

- A. *Adjustment Applications:* Adjustment applications shall be made on forms available from the Planning and Development Services office. An application shall consist of a completed application form; any necessary supporting documentation such as plot plans, building elevations, photographs or other information; and an application fee.
- B. *Review:* Adjustment applications shall be reviewed by the Director of Planning and Development Services and Planning staff. Applications are available for public review and comment.
- C. *Approval Criteria:* The standards in this chapter may be adjusted administratively when the Director of Planning and Development Services determines all the following criteria are met:
 1. The intent of the Sign Ordinance is better achieved with the administrative adjustment than by other alternatives allowed by this section;
 2. Sufficient reason is shown for the adjustment in order to address exceptional or extraordinary circumstances or conditions applicable to the property (including topographical issues), or intended use of the property, that are not contemplated or provided for by this chapter;
 3. The modification is compatible with the scale, character, and design of the building in which the use is located;
 4. The modification is compatible with the scale, character, design and lighting of the adjacent neighborhood or focus area;
 5. The modification is consistent with the purpose of this chapter and would not adversely affect the neighborhood in which the business is located; and
 6. The modification is within the standards identified in the table below.

Allowable Administrative Adjustments

(up to the limits set forth in the table for the type of standard). If the modification exceeds these standards, the applicant may seek a variance from the Board of Adjustment

	Standard	Standard Sign Type	Allowable Max. Administrative Adjustment (up to)
a	Distance from building facade	Wall, Projecting, Shingle Crown	10%
b	Sign, height, display, area or dimensions	All	10%
c	Sign display area for building greater than 4 stories	Wall	10%
d	Height above sidewalk	Wall, Awning, Canopy, Projecting, Shingle	5%
e	Raceway - % of letter height	Wall, Canopy, Crown	5%
f	Sign depth	Awning, Canopy, Projecting, Shingle	10%
g	Distance from façade, entrances	Projecting, Shingle	20%
h	Distance between signs	Projecting, Shingle, Ground	20%

(Ord. No. 2007-02-26/O-3a, §§ 7, 8; Ord. No. 2007-02-26/O-5, §§ 11—13; Ord. No. 2011-04-25/O-3, §§ 1, 2; Ord. No. [2016-06-27/O-11](#), § I; Ord. No. [2016-12-05/O-5](#), § I; [Ord. No. 2020-10-28/O-10](#), § 15; [Ord. No. 2020-11-04/O-1](#), § 1)

Footnotes:

--- (2) ---

* http://www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_14/gs_14-190.1.html

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: Black Mountain Planning Board

From: Planning Staff

Date: August 23, 2021

Subject: Proposed Text Amendment

Description: Update sign ordinance to comply with Reed v. Gilbert

Address: N/A

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

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

How consistent with plan: _____

Why is it reasonable and in the public interest: _____

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

How inconsistent with the plan: _____

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

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

Planning Board Training

July 26, 2021

Ronald E. Sneed, P.A.

Definitions

- Legislative Decision
 - Adoption, amendment, or repeal of a regulation, including the decision to approve, amend, or rescind a development agreement
- Quasi-judicial Decision
 - Decision that requires the exercise of discretion in making finding of facts and a specific application of a development regulation
- Administrative Decision
 - Decision that requires only the determination of facts and the objective application of an ordinance.

Authority of Town

- Must have statutory authority for all regulations and actions
- *Dillon's Rule* – local government is a creature of the state and may *only* do those things that are expressly permitted by the legislature
- *But* N.C.G.S. 160A-4
 - All cities: “should have adequate authority to execute the powers, duties, privileges and immunities conferred upon them by law. To this end, [statutes] and city charters shall be broadly construed . . . to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect.”

Authority of Planning Board

- Cities with zoning regulations *must* designate a planning board, which:
 - *Shall* prepare/review & comment upon proposed zoning text and maps, and proposed amendments
 - *May* hold public meetings and legislative hearings when preparing regulations
 - *Shall* make a written recommendation regarding adoption of the regulation
 - *Shall* advise and comment on whether the proposed action is consistent with the comprehensive plan and other adopted plans as applicable

Authority of Planning Board

- Council may assign to Planning Board:
 - Facilitate & coordinate citizen engagement in the planning process
 - Develop and recommend policies, ordinances, development regulations, administrative procedures for carrying out plans
 - Exercise any functions in the administration and enforcement necessary to carry out plans as directed by Council
 - Provide preliminary forum for review of quasi-judicial decisions, *provided that* no part of the forum or recommendation may be used as the basis for the deciding board
 - Any other related duties as Council may direct

Authority of Planning Board

Black Mountain Land Use Code, Chapter 1, Section 1.4.2

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

- a. Advise and comment on text or zoning map amendments and provide a written recommendation to the 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 development regulations as well as to initiate studies or other planning initiatives;
- c. Approve preliminary plats for subdivisions;
- d. Advise and comment on special use permit applications or annexations and provide a written recommendation to the board of adjustment or board of aldermen as assigned;
- e. Advise and comment on right-of-way closure or acceptance petitions and provide a written recommendation to the board of aldermen;
- f. Carry out additional powers and duties as set forth in local and state regulations and as assigned by the town council;

Meetings

- Planning Board is subject to N.C.'s Open Meetings Law.
 - All meetings require particular notice to the public and record keeping
 - What constitutes a meeting?
 - Anytime a quorum of planning board members are present
 - Email chains where discussion of an issue is occurring between more than two planning board members
 - *Reply all* may result in an inadvertent violation of open meetings law

Meetings- Public Hearings vs. Public Comment

Public Hearings

- Must be called and noticed, and must follow particular meeting procedure
- Failure to meet requirements can result in legal challenge to validity of decision or action

- Consider where this should fit in your meeting agenda

Public Comment

- Can be accepted at any Planning Board meeting without formal notice
- Lack of formality and statutory notice requirements reduces risk of challengeable error.

Conflict of Interest

Black Mountain Land Use Code, Chapter 1, Section 1.4.3

B. Members of appointed boards **shall not vote** on any advisory or legislative decision regarding a development regulation **where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.**

An appointed board member **shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business or other associational relationship.**

Note: If a member recuses for any other reason, vote will be recorded in the affirmative.

Code of Ethics

Boards and Commissions Manual

- Board Members must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent
- “shall assert policy positions and opinions on matters of the body on which they serve only through the transparency of official proceedings of the body. . . Board Members shall not represent their individual views as being representative of the full body unless they have been formally authorized to do so.”
- Faithfully attend meetings and perform assigned duties

www.townofblackmountain.org/DocumentCenter/View/182/Boards-and-Commissions-Handbook-PDF

Comprehensive Plan

- To have zoning regulations, towns must “adopt and reasonably maintain a comprehensive plan. NCGS §160D-501
- Sets out goals, policies and programs to guide physical, social and economic development of the jurisdiction
- *Shall* be adopted by Council with advice and consultation of planning board
- Adoption is a legislative decision
- Must evaluate whether zoning and planning projects or decisions are “consistent” with the plan
- May prepare and adopt other plans – small area plans, neighborhood plans, transportation plans, housing plans, and recreation and open space plans, for example.

Zoning Decisions

- “When conducting a review of proposed zoning text or map amendments pursuant to this section, the planning board *shall* advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable.” §160D-604(d)
- The recommendation *shall* be in writing
- A comment that proposed amendment is inconsistent shall not preclude the Council from considering the amendment.

Subdivisions

- *May* be made by the governing board on recommendation of a designated body, [Major Subdivisions, Legislative Decision] or
- *May* be made by the planning board, technical review committee of staff members, or other designated body or staff [Minor Subdivisions, Administrative Decision]
- Minor Subdivision: A subdivision, other than an exempt subdivision, which involves no new public streets or roads, and where the entire tract to be subdivided is five acres or less in size, and where four or fewer lots will result after the subdivision is complete.
- Exempt: recombinations, > 10 acres w/ no new roads; <2 acres into < 3 lots w/ no new roads; division for estates; conservation

Street Closings

- Planning Board review established by ordinance
- Planning Board recommends to Council, who will hold a public hearing and then decide whether to permanently close the street or alley
- Legislative decision
- Standard: not contrary to the public interest, and no owner in the vicinity would be deprived of reasonable means of ingress and egress to his property
- May reserve a right or interest in any improvements or easements within street, including utility, draining, pedestrian, landscaping, conservation, or other easements considered to be in the public interest.

Additional Training Materials

- School of Government zoning board workshops
 - Virtually, August & September, day & evening offerings
 - One focused on legislative zoning decisions (rezonings and zoning text amendments)
 - The other focused on quasi-judicial decisions (variances, special use permits, certificates of appropriateness)
- *Quasi-Judicial Workshop 1*: August 24, 1:00-3:30
- *Legislative Board Workshop 1*: August 26, 1:00-3:30
- *Quasi-Judicial Workshop 2*: September 13, 5:30-8:00 (evening, same content as 8/24)
- *Legislative Board Workshop 2*: September 14, 5:30-8:00 (evening, same content as 8/26)
- <https://www.sog.unc.edu/courses/regional-board-workshops-planning-and-development-regulation>

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