



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 October 25, 2021
Date: October 15, 2021

The **Town of Black Mountain Planning Board** will meet on **Monday, October 25, 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 September 27, 2021;
3. Introduction to UDO – Kelli McCormick – Kendig Keast Collaborative;
4. Proposed Text Amendment – Sign Definitions;
5. Proposed Text Amendment – Sign Ordinance; and
6. Proposed Text Amendment – Food Trucks.

Please let Jennifer Tipton know if you are unable to attend this meeting.
jennifer.tipton@tobm.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@tobm.org.

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



PUBLIC NOTICE

BLACK MOUNTAIN PLANNING BOARD

In order to maintain the safety of Town residents, staff, and the Planning Board, the Planning Board regular meeting scheduled for **Monday, October 25, 2021, at 6:00 p.m. will be conducted electronically using Zoom software** in lieu of its in-person meeting. The Town of Black Mountain Town Hall will not be open for this meeting.

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

1. **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/84636693093>

Meeting ID: 846 3669 3093

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.

2. **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: 846 3669 3093 followed by the Pound sign (#)

3. **Email or call in your comments or questions prior to the meeting.**

Call in comments prior to the meeting: Clerk to Planning Board at 828-419-9371

Email comments to: jennifer.tipton@townofblackmountain.org

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 10/01/2021
www.townofblackmountain.org



AVISO PÚBLICO

JUNTA DE PLANIFICACIÓN DE BLACK MOUNTAIN

Con el fin de mantener la seguridad de los residentes de la Ciudad, el personal y la Junta de Planificación, la reunión ordinaria de la Junta de Planificación programada para el **lunes 25 de octubre de 2021, a las 6:00 p.m.** se llevará a cabo electrónicamente utilizando el software Zoom en lugar de su reunión en persona. El Ayuntamiento de Black Mountain no estará abierto para esta reunión.

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

1. **Únase a la reunion 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/84636693093>

ID de reunión: 846 3669 3093

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.

2. **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: 846 3669 3093 seguido del signo de libra (#)

3. **Envíe un correo electrónico o llame a sus comentarios o preguntas antes de la reunión.**

Llame en comentarios antes de la reunión: Secretario de la Junta de Planificación al 828-419-9371

Envíe sus comentarios por correo electrónico a:
jennifer.tipton@townofblackmountain.org

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 municipal 10/01/2021
www.townofblackmountain.org



**Planning Board Regular Meeting
October 25, 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 September 27, 2021, as written [or as amended]
- IV. NEW BUSINESS**
 - Introduction of UDO Project – Kelli McCormick – Kendig Keast Collaborative
- V. OLD BUSINESS**
 - Proposed Text Amendment – Sign Definitions
 - Proposed Text Amendment – Sign Ordinance
 - Proposed Text Amendment – Food Trucks
- 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 Monday, September 27, 2021, at 6:00 p.m. electronically via Zoom.

I. CALL TO ORDER

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

Chris Collins, Chair
Pam Norton, Vice Chair
Lauronda Teeple
Chas Fitzgerald
Shawn Slome
Kathy Phillips
Rick Earley

Staff:

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

The meeting was called to order at 6:01 p.m. and duly constituted and opened for business with a quorum of seven (7) regular members.

II. ADOPTION OF AGENDA

Chas Fitzgerald made a motion to adopt the agenda as presented. The motion was seconded by Shawn Slome and approved by a vote of 7-0.

III. ADOPTION OF MINUTES

Chas Fitzgerald made a motion to adopt the minutes of August 23, 2021, as written. The motion was seconded by Shawn Slome and approved by a vote of 7-0.

IV. OLD BUSINESS

1. Proposed Text Amendments – Sign Definitions

Jake Hair explained that the only change to the definitions was that he added a definition for murals to help clarify the difference between a sign and a mural. The board asked that language be added that a mural cannot contain commercial branding. The board decided to defer any decision on the proposed text amendments until after review of the sign ordinance to make sure that nothing else needs to be added to the definitions.

2. Proposed Text Amendments – Sign Ordinance

Jake Hair went through the changes that he had made from the last draft. Those changes include removing string light bulbs from prohibited signs, adding a section about removal of illegal signs, adding a section about grandfathering of existing signs, changing the size of crown signs from eight feet to six feet and changing the spacing of ground signs from one hundred and fifty feet to one hundred feet.

Chas Fitzgerald asked if a timeframe could be added to the grandfathering section so that existing signs would eventually have to come into compliance. Jessica Trotman explained that

Planning Board Regular Meeting
September 27, 2021

amortization is a legal question for the Town Attorney and that the timeframe for amortization cannot be arbitrary. Ms. Trotman said she will add this to her questions to ask the Town Attorney.

Mr. Fitzgerald recommended that crown signs be divided to say that letters cannot be larger than four feet in height and the overall height of the whole sign cannot be larger than six feet in height. Lauronda Teeple suggested adding sign elements into that size requirement because sometimes businesses have symbols or pictures in their name. Ms. Teeple suggested saying that any part of the identity of the sign be included, including title, icons, and any graphic elements. Staff will do a literature review of other jurisdictions and bring back some options to look at. Mr. Fitzgerald asked about the spacing for ground signs and what if a lot is narrower and cannot meet the one-hundred-foot requirement. Mr. Hair explained that the cantilevered ground signs would be used in those cases. The board wants to make sure that there is consistent signage and Ms. Trotman suggested utilizing a ratio or percentage related to the lot width and the ground sign so that the scale would fit to the property, but the signage would be consistent. Ms. Trotman will work on this math and bring back to the board.

Mr. Fitzgerald spoke about allowing temporary banners for new businesses because they are necessary to educate the consumer that a new business has opened. The board agreed but does think that there needs to be a limited duration for the temporary banners. Pam Norton also spoke about being mindful of the pandemic and that people are having to wait longer on materials and items so the duration may need to be longer. One suggestion was to allow a temporary banner for sixty days or until the permanent signage was affixed, whichever time is longer. The board also spoke about having two types of temporary banners, those for new businesses and then true temporary banners, for example a now hiring banner, which would have a shorter time duration. These would be listed under the permitted sign section.

Kathy Phillips asked about having a size limit on state and local flags so that there are not giant flags flying around. Anna Stearns said that the allowance of state and local flags would not include confederate flags and that would need to be an enforcement call by staff. The board agreed that there need to be maintenance requirements for signs, including flags. Ms. Stearns suggested leaving the language as it is for now and then if the flags become a problem, then the ordinance can be amended. Ms. Stearns did state that there is plenty of case law on the ability for someone to display a flag. Lauronda Teeple also mentioned that mounting requirements and location of the sign factor into what size flag someone might could have. Staff will look at some other jurisdictions to see how they regulate these and will bring back some examples.

Ms. Phillips asked about home based business signs and it was explained that those requirements are under the home occupation ordinance section.

Chris Collins commended staff on the proposed ordinance and said that it was well organized and easy to follow.

The board decided to table both the sign ordinance and the sign definitions until staff comes back next month with examples of the requested items.

3. Proposed Text Amendments – Food Trucks

Jessica Trotman explained that the version of the proposed food truck ordinance sent out is a working version and she is working on creating some decisions to bring back for the board to decide on. Ms. Trotman will bring back another detailed version at the next meeting. Ms. Trotman spoke about some of the questions that need to be answered such as what zoning districts will these be allowed in, are they allowed on properties without a primary structure, are

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they temporary or permanent and should there be a timeframe, and should they have accessory structures or should they count to the primary structures. Again, Ms. Trotman said that these were food for thought and she will bring back another version with specific decision points as well as the basics and the question is how do we address this use like we would any other. Food trucks are required to have commissary kitchens and they can be off-site or on-site. Ms. Trotman explained that the Town is not concerned with the rules from Buncombe County but are concerned about the use.

Jerry "Jay" Neumann, The Pizza Machine, said that he was invited to attend to tonight because of this topic and he has some concerns. He asked if he would be grandfathered in with his existing accessory structures. Ms. Trotman said that any existing food truck would be grandfathered in. His next question was in regards to his shipping container that he wants to turn into a bathroom and commissary kitchen and wants to make sure he will not have problems obtaining a permit to do that. Ms. Trotman said that she cannot give a definitive answer to that but the owner is the one who can pull them permit and then we have to ask what is it accessory to. Ms. Trotman explained that this is not pointed at any one business but is to help get away from crowd and clutter and that the board will have to decide on a limit to accessory structures. Accessory structures are already defined in the ordinance but shipping containers, or conex boxes, are not legally structures and have to be engineered. Ms. Trotman said the point of the proposed ordinance is to foster the orderly use of food trucks and while the ordinance has to answer the nitty-gritty questions, the application could be very general. The concern is a secondary situation to a property with an existing building and having multiple food trucks and what are the safety and traffic measures. The board asked Mr. Neumann to explain his plan and Anna Stearns made sure to note that any conversation at this meeting does not give any permission, blessing, or approval and that Mr. Neumann will need to speak with staff separately about his project and that it would need to be approved through a formal process.

Mr. Neumann explained that he would like to take the one shipping container and turn it into a bathroom and commissary kitchen. He would then like to add another shipping container for dry storage. He would also like to add two additional electrical meters to allow for two more food trucks that he would lease to with no specific time limits. He is cognizant of his neighbors and does not plan to have a breakfast food truck, a hamburger food truck, or a mussels food truck. The board asked Mr. Neumann to put his plans in writing and Ms. Trotman asked that he also include a map showing his lease lines. Ms. Trotman again explained that the shipping containers would have to be engineered no matter what the use and that the proposed ordinance is only dealing with mobile food vendors that are licensed by the DMV and have wheels.

Ms. Trotman said that if the board is wanting to look at structures that are not mobile then that is a separate definition with separate rules and becomes a whole other question.

The board suggested removing the requirement of one food truck per parcel and not calling them permanent but instead maybe calling them extended or semi-permanent or long-term or tier one and tier two. Ms. Trotman will put together more information and bring back to the next meeting.

V. NEW BUSINESS

1. Preliminary Plat for Cherry Street – Barry Ricketts

Don Blankenship, High Country Surveyors, explained that Barry Ricketts inherited the properties by will and the deeds are quite hold so Mr. Ricketts is trying to clean up the property lines to fit more with the existing buildings. There are currently five existing parcels that will be

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turned into eight parcels. Several board members expressed concern about lack of access to Tract B and Tract E and suggested that Tract A grant an access easement to Tract B in the rear and that Tract C grant an access easement to Tract E in the rear. Mr. Blankenship said that he will speak to his client about the easements and Anna Stearns clarified that the easements cannot be required or considered for approval of the plat. Some of the PIN numbers were not included on the application so the board asked that the application be corrected and resubmitted to Jake Hair. The Planning Board recommended approval of the preliminary plat with the condition that the application be corrected and resubmitted.

VI. COMMUNICATION FROM PLANNING BOARD

None.

VII. COMMUNICATION FROM STAFF

Jessica Trotman announced that Kendigkeast Collaborative has been awarded the contract for the UDO. Ms. Trotman said that she had a two-hour phone call with the consultant to talk about the project and hopes to have the contract executed soon. Planning Board members will have opportunities to participate in the process at different levels and we hope to get started in the next four to six weeks.

VIII. ADJOURNMENT

Rick Earley made a motion to adjourn at 8:27 p.m. The motion was seconded by Chas Fitzgerald and approved by a vote of 7-0.

Prepared by:

Chris Collins, Chair

Jennifer Tipton, Senior Admin

Chapter 1

Section 1.2.3 - Definitions.

Mobile food court/food truck court: a lot where two or more mobile food vendors congregate to offer food or beverages for sale to the public as the principal use of the land. This definition shall not be interpreted to include a congregation of mobile food vendors as a secondary, accessory, or temporary use.

Chapter 5

Section 5.24 - Mobile food trucks and food carts.

These regulations do not apply to mobile food vendors included in a special event permit.

- a. Permit required. Permits are issued by the zoning administrator and shall last for a period of one year.
- b. Site plan required. A site plan shall be included with the permit application and shall show the location of the mobile food truck or food cart, site maneuvering, and parking.
- c. Multiple locations may be included on a single permit with additional approvals included.
- d. No mobile food vendor shall be permitted to operate on a public street, sidewalk or right-of-way.
- e. Mobile food vendors shall only be located on private property owned by the operator or with approval of the private property owners.
- f. Mobile food vendors may operate from 6:00 a.m. to 2:00 a.m., except in NMU-8, which may operation from 8:00 a.m. to 10:00 p.m.
- g. A copy of a valid, approved permit and health department inspection grade card from the Buncombe County Health Department and the Town of Black Mountain shall be visually displayed on the mobile food truck or cart in clear view of all patrons.
- h. Mobile food vendors shall not be parked in the setbacks of the property. If there are zero lot lines in the district, then this rule is not applicable.
- i. There must be at least one parking space per mobile food vendor on location.
- j. Site maneuvering: Each mobile food vendor shall have sufficient space to maneuver onto the lot for safe access by pedestrians and emergency response vehicles. The Fire Department will want to discuss – fire truck access is from the road in most cases, but there are other considerations (evaluations, collapse zones, etc).
- k. The mobile food vendor shall not be parked closer than twenty feet (20') from a structure or other mobile food vendor. Staff believes this from fire code, but Charlie will confirm.

- l. A mobile food vendor vehicle and associated parking may not reduce parking on the location such that the other uses of the parcel do not meet the minimum parking requirements. This does not apply in districts where there are no minimum parking requirements.
- m. Mobile food vendors shall remove trash and litter from the site each day and maintain cleanliness of the site.
- n. No temporary toilet facilities are allowed.

Under our current development regulations, if a food truck, short term or long term, parked on a parcel with a previously established use, any accessory structure or building would have to be linked to the primary use. There is nothing in the ordinances which allows a vehicle to have accessory structures.

Chapter 5

Section 5.25 - Mobile food vendor courts.

I. Site requirements.

- a. There shall be at least one trash can per truck or one dumpster for the entire court (see screening requirements).
- b. Outdoor seating is allowed.
- c. Any structure, such as decks or gazebos, shall meet NC Building Code requirements.
- d. Permanent restroom facilities are allowed.
- e. A permanent, on-site commissary kitchen is allowed.
- f. Permanent power is recommended.
- g. Permanent water connections are allowed with proper permitting.

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: Black Mountain Planning Board

From: Planning Staff

Date: October 25, 2021

Subject: Proposed Text Amendment

Description: Add provisions and rules for mobile food vendors and mobile food courts

Address: N/A

The Planning Board hereby adopts and recommends to the Town Council 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:

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

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

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: October 25, 2021

Subject: Proposed Text Amendment

Description: Update sign ordinance definitions

Address: N/A

The Planning Board hereby adopts and recommends to the Town Council the following statements:

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

How consistent with plan: _____

Why is it reasonable and in the public interest: _____

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

How inconsistent with the plan: _____

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

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

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: Black Mountain Planning Board

From: Planning Staff

Date: October 25, 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 Town Council 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:
