



TOWN OF BLACK MOUNTAIN

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

Date: **February 14, 2022** Time: **6:00 p.m.**

Regular Session Agenda

The agenda and all related documentation may be accessed electronically via Wi-Fi in Town Hall. From your laptop or smartphone, access the Town's website at www.townofblackmountain.org. Click on **Town Government** and select **Mayor and Council** to download materials for all Town Council meetings.

 **Conserve resources; print only when necessary.**

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 (ADA). Hearing assistive devices are available at the door.

Should you need other assistance or accommodation for this meeting, please contact

Town Clerk at 419-9310, or by email at townclerk@townofblackmountain.org

(828) 419-9300 / TDD (800) 735-2962

1. CALL TO ORDER

- Welcome
- Prayer - Deacon Levon Lindsey, Mills Chapel Baptist Church
- Pledge of Allegiance
- Announcements

2. PROCLAMATIONS, AWARDS & RECOGNITION

3. CITIZEN COMMENTS

Individuals wishing to address the Council are asked to sign in at the entrance to the Council room, indicating agenda item(s) you wish to discuss, so that the chair may group speakers according to topic. The chair will recognize individuals requesting to address the Council. **Comments by any one speaker shall be limited to three (3) minutes.**

To send comments prior to the meeting, please call Town Hall at 828-419-9310 or email comments to Comments@townofblackmountain.org. The Clerk will compile them and present them to the Mayor for consideration.

4. COMMUNICATIONS FROM STAFF, COUNCILS, COMMISSIONS & AGENCIES

- A. Black Mountain Police Department Annual Report
- B. Black Mountain Library Board Annual Report
- C. Wellhead Protection Plan Presentation
- D. Presentation of the FY 20-21 Audit

5. CONSENT AGENDA

All items on the consent agenda are considered routine, to be enacted by one motion without discussion. If a member of the governing body requests discussion of an item, the item will be removed from the consent agenda and considered separately.

A. Adoption of Minutes

Motion: *To adopt the minutes of the January 10, 2022 Regular Session Meeting, the January 6, 2022 Agenda Meeting, the January 28, 2022 Special Call Meeting, and the December 13, 2021 Closed Session Meeting.*

Consent Motion: *To approve consent item A as presented.*

6. CITIZEN COMMENTS

*The chair will recognize individuals requesting to address the Council regarding the specific **New Business or Unfinished Business items below**. Comments by any one **speaker shall be limited to three (3) minutes**. If the topic you wish to discuss pertains to a **public hearing** scheduled for this meeting, please reserve your comment for the applicable public hearing.*

To send comments prior to the meeting, please call Town Hall at 828-419-9310 or email comments to Comments@townofblackmountain.org. The Clerk will compile and present written comments to the Mayor for consideration.

7. UNFINISHED BUSINESS

8. NEW BUSINESS

A. Dr. John Wilson Community Garden Barn and Event Facility Discussion

B. Short Term Rental Discussion

C. Jacobs Cottages Water Line Acceptance

Motion: *To accept the water lines in Jacobs Cottages into the town water system.*

D. Summer Camp Fee Schedule Amendment

Motion: *To approve the summer camp fee schedule as presented.*

E. Text Amendment Phase II Post Construction Stormwater Ordinance

Motion: *To approve the amendment as presented.*

9. PUBLIC HEARING

The chair will recognize individuals requesting to address the Council regarding the specific topic of the public hearing. Public hearing comments by any on speaker shall be limited to ten (10) minutes. The Mayor reserves the right to alter time limits and other rules of procedure at the beginning of each Public Hearing.

A. Public Hearing for Rezoning of 713 NC 9 Hwy #Z-O-22-01

Motions for Consideration:

1. To open the public hearing to rezoned 713 NC 9 Hwy from TR-4 to HB-8.
2. To close the public hearing.
3. To adopt ***Zoning Ordinance #Z-O-22-01*** (statement of consistency included) to rezone 713 NC 9 Hwy from TR-4 to HB-8.

10. COMMUNICATION FROM STAFF

- A. Town Attorney – Ron Sneed
- B. Town Manager – Josh Harrold

11. COMMUNICATION FROM MAYOR AND TOWN COUNCIL

12. CLOSED SESSION

- A. Closed session to discuss the potential acquisition of property as permitted by North Carolina General Statute 143-318.11(5)

13. ADJOURNMENT



Josh Harrold
Town Manager



PUBLIC NOTICE

BLACK MOUNTAIN TOWN COUNCIL MEETING

JUNTA DEL AYUNTAMIENTO

Thursday, February 10, 2022 at 5:00 p.m.
Jueves 10 de Febrero de 2022 a las 5:00 p.m.

The Black Mountain Town Council will meet for their monthly Agenda Workshop Meeting on **Thursday, February 10 at 5:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC.

The meeting is open to the public. Masks are required.
Está abierta al público. Se requieren máscaras.

Savannah M. Parrish
Savannah Parrish
Town Clerk

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Estamos comprometidos a proporcionar instalaciones, programas y servicios accesibles para todas las personas de conformidad con la Ley de Estadounidenses con Discapacidades (ADA). Si necesita ayuda o una adaptación en particular para esta reunión, comuníquese con Savannah Parrish, secretaria municipal al 419-9300 o por correo electrónico a townclerk@townofblackmountain.org

Please visit www.townofblackmountain.org to obtain agenda packets and other meeting information.
Visite www.townofblackmountain.org para obtener paquetes de la agenda y otra información.

Posted to the Town Bulletin Board 01/14/2022



PUBLIC NOTICE **NOTICIA PÚBLICA**

BLACK MOUNTAIN TOWN COUNCIL

REGULAR SESSION MEETING **JUNTA DEL AYUNTAMIENTO**

Monday, February 14, 2022 at 6:00 p.m.
Lunes 14 de Febrero 2022 a las 6:00 p.m.

The Black Mountain Town Council will meet for their monthly Regular Session Meeting on **Monday, February 14, 2022 at 6:00 p.m.** in the Board Room in the Town Hall Building, 160 Midland Avenue, Black Mountain, NC.

The meeting is open to the public. Masks are required.
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Black Mountain End of the Year Report 2021



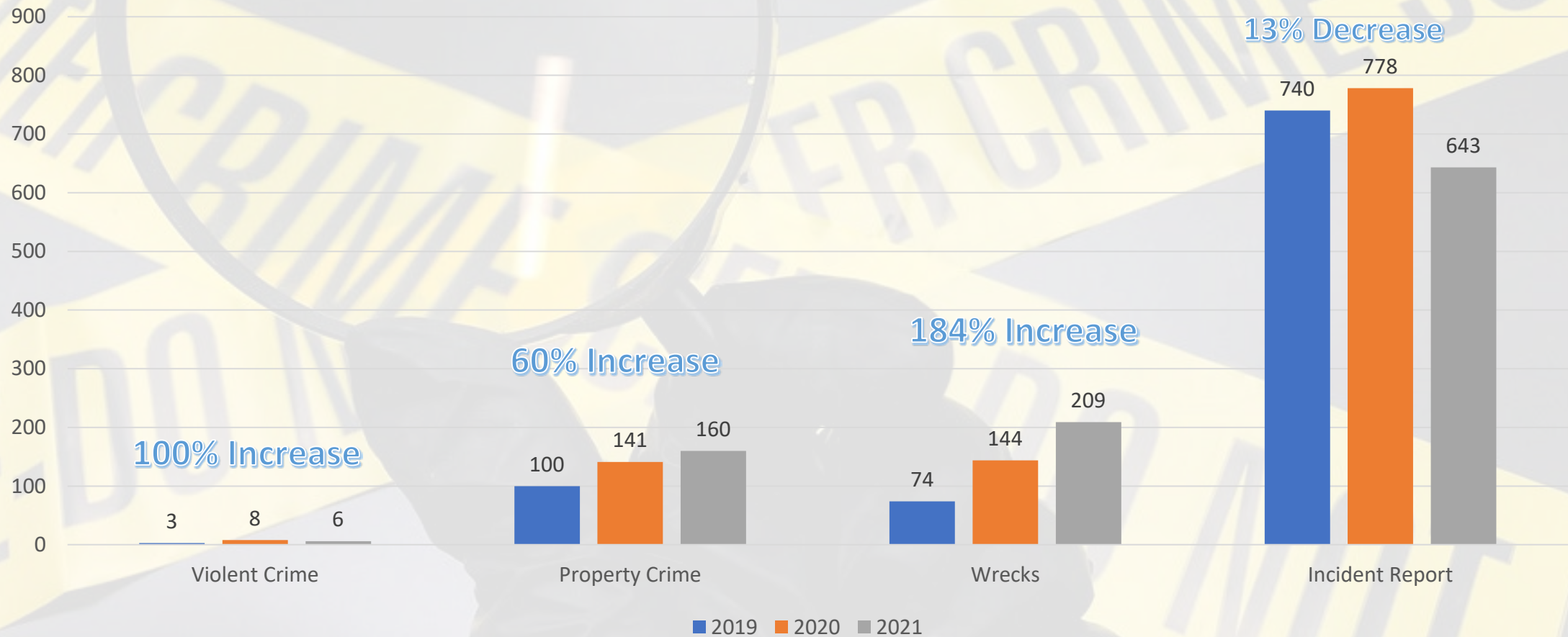


Objectives

- 1) Crime Stats
- 2) NCLEA 2% - Power DMS
- 3) NCLM Risk Review 14%
- 4) SB 300 Police Reform – Early Warning Intervention
- 5) Training
- 6) Community Service- CHBAV, DTRT, Special Olympics, Golf Tournament – Cadet Program Enhanced , Safety Saturday
- 7) CAD/RMS Interoperability
- 8) Body Camera's
- 9) Swat Equipment Grant \$23,000- Accreditation Grant Applied
- 10) Biggest Challenges

CRIME STATS

3- YEAR TRENDS





Pilot Program 1 of 7 Agencies in NC selected

2% Reduction in Insurance

• We are excited to announce that the North Carolina Law Enforcement Accreditation program is moving forward with our pilot agencies and have selected seven agencies for the program. I am also proud to say that your agency has been selected to be part of our pilot! The selected pilot agencies are:

- -Black Mountain Police Department
- -Brunswick County Sheriff's Office (CALEA Accredited)
- -Elizabeth City State University Police Department
- -North Carolina State University Police Department (CALEA Accredited)
- -Orange County Sheriff's Office
- -Roxboro Police Department
- -Wilmington Police Department (CALEA Accredited)
-

• I want to thank all of you for your interest in being part of the NCLEA Program as a pilot. I have noted which agencies are CALEA Accredited for those agencies who are not. It is our hope that the various agencies can act as a resource for questions and concerns or that an accredited agency may share additional wisdom.

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PROFESSIONALISM



The North Carolina League of Municipalities is a member-driven organization representing the interests of cities and towns in the state. Through their collective efforts, League member cities and towns better serve their residents and improve quality of life.

For more than 100 years, the League has been one voice for cities and towns working for a better North Carolina.

NCLM

LAW ENFORCEMENT RISK
REVIEW

2021

- *14% Cost reduction on Insurance*

- *39 Standards Reviewed*

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I. ADMINISTRATION SECTION:

1. Supervisor Training:

- **Basic Leadership:** The department requires initial supervisory training for new sergeants, supervisors, and commanders. This can include documented agency and town policy review/testing, and the completion of the NCLM Online-Supervision Training.
- **Professional Development:** The department provides structured (internal or external) annual training in high liability policy, trends and supervisory practices for supervisors and commanders. This may include structured-internal training and policy review, professional conferences, workshops, lectures, NCLM RMS Training, and any other recognized professional training.

Examples: The department seeks professional development for supervisors and commanders including, but not limited to:

1. Management Development Program (MDP)-NCJA
2. Administrative Officers Management Program (AOMP)-NCSU
3. FBI National Academy (NA)
4. Southern Police Institute- University of Louisville
5. Law Enforcement Executive Program (LEEP)-NCSU
6. Any professionally recognized leadership program or seminar
7. IACP Annual Conference
8. NCPEA Annual Conference
9. NCACP Annual Conference
10. FBI National Academy (NA)- Alumni Annual Conference
11. Documented high-risk agency and town policy review/testing, and the completion of the NCLM Online Supervision Training
12. Any other professionally recognized leadership-training organization

Accomplished?	Y N	COMMENTS- Please Indicate how the department has met the category dimensions. Include policy numbers, directives, verification of training, or other validation of completion:
Related Agency Policy Number(s)		
Has completion of the NCLM Online-Supervision Training been verified and certificates printed and maintained in the supervisors training file? And/or		
Please provide validation of other supervisory training, certificates/transcripts'		

SB 300
Police Reform
Effective
Dec 1

Good Afternoon Chiefs and Agency Staff,

I hope you all had a blessed and stress free Thanksgiving! As we get back to work this week, here is a reminder about new legislation:

One of the many mandates of Session Law 2021-138, SB 300 requires that all law enforcement agencies in North Carolina develop and implement an Early Warning System. The requirement becomes effective December 1, 2021, and applies to actions and behaviors on or after that date.

The language specified in the statute is as follows. There is **no requirement** to report this information to the CJ or Sheriffs' Standards Divisions.

"§ 17A-10. Development of law enforcement early warning system.

(a) Every agency in the State that employs personnel certified by the North Carolina Criminal Justice Education and Training Standards Commission or the North Carolina Sheriffs' Education and Training Standards Commission shall develop and implement an early warning system to document and track the actions and behaviors of law enforcement officers for the purpose of intervening and improving performance. The early warning system required by this section shall include information, at a minimum, regarding the following:

- (1) Instances of the discharge of a firearm.*
- (2) Instances of use of force.*
- (3) Vehicle collisions.*
- (4) Citizen complaints.*

(b) Information collected under this section that is confidential under State or federal law shall remain confidential.

(c) For purposes of this section, "law enforcement officer" means any sworn law enforcement officers with the power of arrest, both State and local."

This section becomes effective December 1, 2021, and applies to actions and behaviors on or after that date.

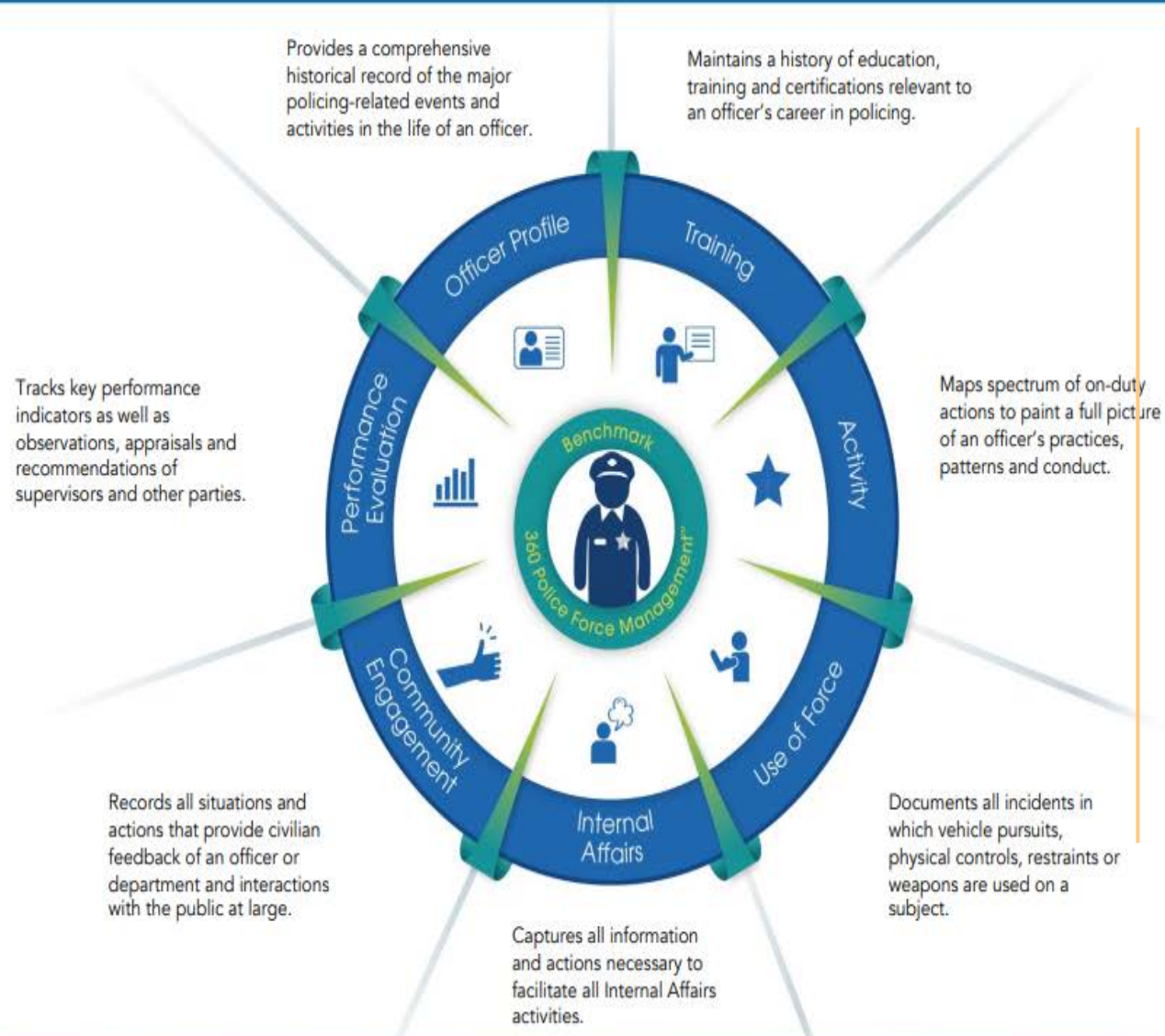
I hope this information is helpful. Please let me know if you have any questions.



JEFFREY SMYTHE

Director
Criminal Justice Standards Division
Office: (919) 779-8203
Fax: (919) 779-8210
jsmythe@ncdoj.gov
1700 Tryon Park Drive
Raleigh, NC 27602-0149
ncdoj.gov

Please note messages to or from this address may be public records.



Training Requirements

State Requirements
NCLM
NCLEA

- Firearms
 - Active Shooter
 - Driving-Pursuit
 - Biased Based Profiling
 - Use of Force
 - Homicide Investigation
 - Sexual Assault
 - Defensive Tactics
 - Sexual Harassment
 - Mental Health
 - Verbal Judo
 - Drug Investigations
- Mandated In-service Classes: 285
 - Advanced Training Classes: 84 (AB Tech, Justice Academy, online etc.)
 - Total: 369 (total classes)
- Mandated In-service Hours: 1004 hrs. (includes Firearms, Combat, BBP and HAZMAT)
 - Other In-service Hours: 1671hrs. (AB Tech, Justice Academy online etc.)
 - Total: 2675 (total hours) 69 Weeks

Community Service



Cops On Top-
Special Olympics-
May

Christmas –Holiday
with Hero



Golf Tournament-
June 3rd

Thanksgiving
Fundraiser



Roc-Solid
Playground

National Night Out-
Open House August

Coffee With a Cop-
Quarterly

Cadet Program



Could
have
been a
victim

Black Mountain Police

Be careful- We noticed that
you could have been a victim and
We care about your welfare!

CONCERN

- ☐ You left valuables in plain view
- ☐ Open door or window
- ☐ Garage Door Open
- ☐ Car door left unsecure
- ☐ Routine Property Check

QUESTIONS CALL
828-419-9350

Black Mountain PD



Officer _____
Case# _____
Date&Time _____
False Alarm Notice _____

Don't get SCAMMED



- Be cautious of unsolicited phone calls, mailings, and door-to-door services offers.
- Never give or send any personally identifiable information, money, jewelry, gift cards, checks, or wire information to unverified people or businesses.
- Avoid giving someone "remote access" to your computer or electronic device
- If a criminal gains access to your device or account. Immediately contact your financial institutions.
- Stop and talk to someone you trust.
- Do not give passwords to anyone over the phone.

Could Have been a Victim

Community



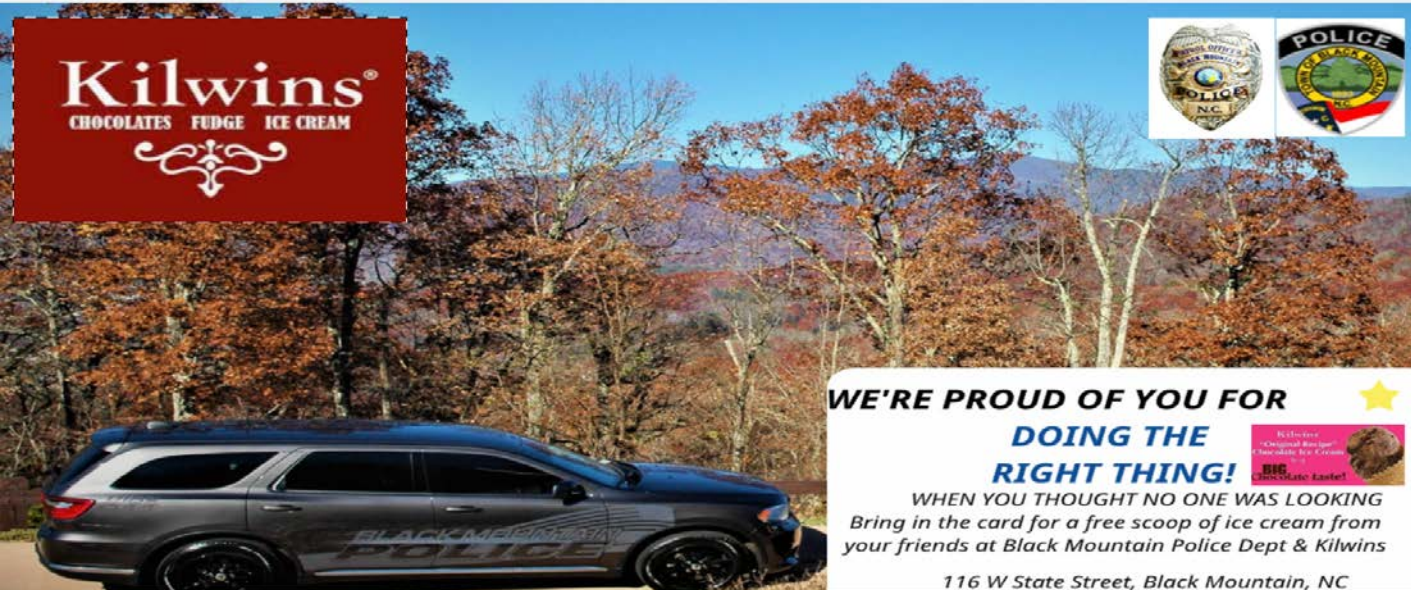
**WE'RE PROUD OF YOU FOR
DOING THE
RIGHT THING!**

WHEN YOU THOUGHT NO ONE WAS LOOKING
Bring in this card for a free scoop of ice cream from your friends at
Black Mountain Police Dept & Kilwins

116 W State Street, Black Mountain, NC



Black Mountain Police



**WE'RE PROUD OF YOU FOR
DOING THE
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Bring in the card for a free scoop of ice cream from
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116 W State Street, Black Mountain, NC

Black Mountain Police Department

Black Mountain Police - Hacking for Heroes



Black Mountain Golf Course

FRIDAY, JUNE 3, 2022

REGISTER NOW

Black Mountain Police Outreach

Register

Sponsorships

About Us

Our Supporters

OUR SUPPORTERS

BLACK MOUNTAIN POLICE



HACKING FOR HEROES

Black Mountain Police Department prides itself on relationships with the community and police. We need your help to raise funds for our community outreach programs and initiatives. Your participation goes to help feed families during Thanksgiving, Buy Christmas presents for needy children, fund the Teen Cadet program, Officer incentive program, and others. Please sponsor, donate, or golf in this worthy cause.

EVENT DETAILS

Course Name

Black Mountain Golf Course
15 Ross Dr
Black Mountain NC 28711

Get Directions

Web Site

Event Contact

Steve Parker
Email:
steve.parker@tobm.org
Phone:
(828) 419-9350

1130am till 6pm

Friday, June 3, 2022

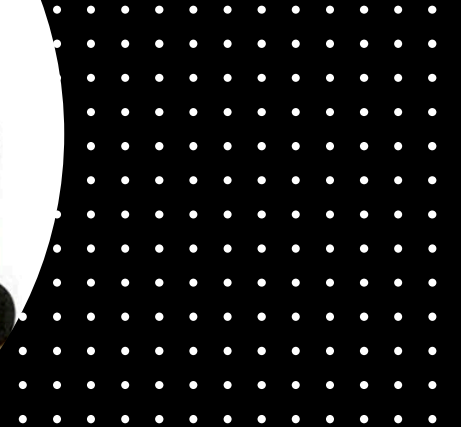
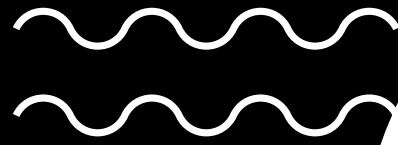
Registration Start Time 11:30 AM

Lunch Start Time 11:30 AM

Event Start Time 12:45 PM



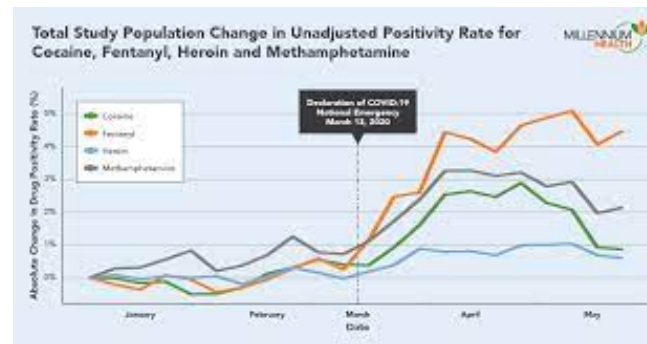
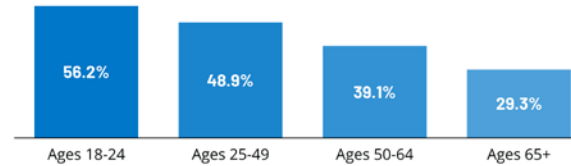
SWAT
Equipment
Grant
\$23,475



Biggest Challenges

- Staffing Crisis - Retention vs Recruitment
- Homelessness Issue
- Mental Health Crisis
- Narcotics Issues- Meth, Heroin, and Fentanyl
- Body Camera's- No longer make them – Not integrated
- CAD/RMS
- vehicles- huge concern 36-52 weeks out

Younger Adults are More Likely to Report Symptoms of Anxiety and/or Depressive Disorder During the COVID-19 Pandemic



Software Integration



Date	Reason for shortage
5/29/2021	0 Officers available for calls (night shift)
6/2/2021	0 Officers available for calls (day shift)
6/3/2021	0 Officers available for calls (day shift)
6/3/2021	0 Officers available for calls (night shift)
6/4/2001	1 Officer in town (night shift)
6/8/2021	0 Patrol Officers Available (day shift)
6/11/2021	0 Patrol Officers Available for calls (day shift)
6/11/2021	0 Patrol Officers Available for calls (day shift)
6/11/2021	1 Officer in town (night shift)
6/13/2021	1 Patrol Officer in town (day shift)
6/13/2021	0 Patrol Officers available for calls (day shift)
6/15/2021	0 Patrol Officers Available for calls (day shift)
6/17/2021	0 Patrol Officers Available fo calls (day shift)
6/21/2021	0 Patrol Officers Available for calls (night shift)
6/21/2021	0 Patrol Officers Available for calls (night shift)
6/24/2021	0 Patrol Officers Available for calls (day shift)
6/28/2021	1 Patrol Officer in town (night shift)
6/29/2021	0 Patrol Officers Available for calls (day shift)
6/29/2021	0 Patrol Officer Available for calls (night shift)
6/30/2021	1 Officer in town (night shift)
6/30/2021	0 Officers in town (night shift)

Reason for shortage

Officer at jail with an arrest, Lt.was busy with a hit and run at Silverado's

All Officers on shift Sgt., Major, and Officers were busy on calls at the same time, Montreat and Sheriff's Assisted.

All Officers on shift busy (including Chief, Officers, Sgt., Major, CID) responded to a shooting at Quality Inn.

Officers on duty were on two separate calls one assisting the county on domestic, other on a civil disturbance.

Multiple Arrest Warrant Service.

Major had to answer a call about a hit and run when both officers were out on a disturbance call.

Officers busy on a foot chase on Penelope and arrest

Officers busy on a suspicious person case N. Blue Ridge

Officer at Mission Hospital due to voluntary transport

Due an arrest there was one officer in town

Due to answering calls and assisting Buncombe County on call outside city

FTO and Trainee at jail on arrest, Officer, CID, and Lt. On deceased subject call. Major had to take calls.

Officers busy on a deceased subject call.

Officers busy on separate calls for service.

Officers busy on separate calls for service.

All officers (including Chief and Major) busy on a domestic assault call that occurred in the parking lot of fire dept, and subsequent vehicle chase.

One officer in town due to an arrest due to an assault on an officer, Resist delay obstruct

All officers busy (2 on a domestic call, and the other on a traffic stop. Major checked in on the stop to assist)

All Officers assisting Buncombe County SO on a request for mutual aid.

Officer at the jail with an arrest.

Officers assisting Montreat PD on mutual aid in reference to B&E in progress

SICK, VACATIONS, TRAINING VACANCIES

STAFF SHORTAGES

7/1/2021	1 Officer in town (night shift)	O	POLICING AND POLICY									
7/8/2021	1 Officer in town (day shift)	F	WSJournal Report: Police Departments Struggling To Retain, Replace Officers									
7/8/2021	1 Officer in town (day shift)	O	The Wall Street Journal   (1/27, Maher, Subscription Publication) reports police departments nationwide are struggling to remain fully staffed, as resignations increase despite some departments increasing funding and recruitment. Officers cite budget cuts and increased hostility toward police during defund-the-police movements that began after the killing of George Floyd.									
7/8/2021	0 Patrol Officers available for calls	F										
7/12/2021	1 Officer in town (day shift)	O										
7/14/2021	0 Officers in town (day shift)		Requested to assist officer of Buncombe County Sheriff's Office at Shell in Swannaoa in reference to stalking.									
7/14/2021	0 Officers available for calls (day shift)		Officers busy on disturbance call on Carver Ave.									
7/22/2021	1 Officer available in town (day shift)		Officer's busy at Mission due to traffic investigation, Officers at jail with arrestee.									
7/29/2021	1 Officer available in town (day shift)		Officer busy on IVC commitment.									
8/7/2021	0 Officers available in town (night shift)		Officers busy on vehicle chase.									
8/13/2021	1 Officer available in town (night shift)		One officer in town due to an arrest at Silverados									
8/16/2021	0 Officers available in town (day shift)		Officers out on call of out of control juvenile									
8/20/2021	1 Officer available in town (night shift)		Officer busy on Voluntary commitment.									
8/21/2021	1 Officer available in town (night shift)		Officer busy on Voluntary commitment.									
11/10/2021	1 Officer available in town (night Shift)		Officer busy on arrest multiple charges									
11/17/2021	1 Officer available in town(day shift)		Officers busy on arrest multiple charges									
11/18/2021	0 Officers available in town(day shift)		All officers (including Chief and Major) busy with assisting county with homicide Swannanoa									
11/19/2021	1 Officer available in town (night shift)		Officer Busy at jail for arrest.									
11/25/2021	1 Officer available in town (night shift)		Officer at jail with an arrest.									
12/9/2021	1 Officer Available in town (Day Shift)		One Officer went home sick, the other was out with a death.									
12/31/2021	1 Officer available in town (night shift)		One officer in town due to officer making arrest.									

STAFF SHORTAGES



**TOWN OF BLACK MOUNTAIN TOWN COUNCIL
AGENDA WORKSHOP MEETING MINUTES
January 6, 2022**

THE BLACK MOUNTAIN TOWN COUNCIL held an agenda workshop Thursday, January 6, 2022 at 5:00 p.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain, NC. The purpose of the meeting was to review the agenda for the regular monthly meeting scheduled for Monday, January 10, 2022 at 6:00 p.m.

1. CALL TO ORDER

Mayor Larry B. Harris called the meeting to order at 5:00 p.m. with the following members present:

Mayor Larry B. Harris
Vice Mayor Ryan Stone
Council Member Archie Pertiller
Council Member Pam King
Council Member Doug Hay
Council Member Bill Christy

The following staff members were present:

Josh Harrold, Town Manager
Savannah Parrish, Town Clerk
Ron Sneed, Town Attorney

Mayor Larry Harris opened the meeting. Town Manager, Josh Harrold presented the proposed agenda to the Town Council.

There was some discussion concerning the history of **Item 5D - Project Closure Ordinances and Amendment-Water Capacity Improvement**. Manager Harrold also briefly reviewed changes made to the **Updated Greenways Commission Ordinance – Item 5G**.

Mayor Harris also explained **Item 8C - Discussion of Buncombe County of Mask Mandate Extension**, was meant to give the Town Council and the public an opportunity to express their opinions concerning the ongoing mask mandate.

No items were added to or removed from the agenda.

There being no further discussion Mayor Larry B. Harris adjourned the meeting at 5:11 p.m.

ATTEST:

Savannah Parrish, Assistant to Manger/Town Clerk

Larry B. Harris, Mayor



TOWN OF BLACK MOUNTAIN

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

Date: **January 10, 2022** Time: **6:00 p.m.** **Regular Session Minutes**

*The agenda and all related documentation may be accessed electronically via Wi-Fi in Town Hall. From your laptop or smartphone, access the Town's website at www.townofblackmountain.org. Click on **Town Government** and select **Mayor and Town Council** to download materials for all Town board meetings.*

Conserve resources; print only when necessary.

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 (ADA). Hearing assistive devices are available at the door.

Should you need other assistance or accommodation for this meeting, please contact

Town Clerk Savannah Parrish at 419-9310, or by email at townclerk@tobm.org

(828) 419-9300 / TDD (800) 735-2962

1. CALL TO ORDER

Mayor Larry Harris called the meeting to order at 6:00 p.m. with the following members present:

Mayor Larry B. Harris
Vice Mayor Ryan Stone
Council Member Archie Pertiller
Council Member Ryan Stone
Council Member Bill Christy
Council Member Doug Hay
Council Member Pam King

The following staff members were present:

Josh Harrold, Town Manager
Savannah Parrish, Town Clerk
Anna Stearns, Attorney – Sneed and Stearns

Mayor Harris welcomed the public and led the Pledge of Allegiance and prayer. Mayor Harris informed the public of an upcoming special call meeting to discuss debt financing for infrastructure projects.

2. PROCLAMATIONS, AWARDS & RECOGNITION

Mayor Harris read a Martin Luther King, Jr. Day Proclamation. Martin Luther King, Jr. Day will be observed by the Town of Black Mountain on January 17, 2022.

3. CITIZEN COMMENTS - None

4. COMMUNICATIONS FROM STAFF, COUNCILS, COMMISSIONS & AGENCIES

- A. Heart and Hammer Presentation – Executive Director Ben Fortson gave an overview of the organization’s mission, and shared success stories. The organization focuses on helping the elderly and disabled make home repairs that will enable them to continue living safely in their homes.
- B. Greenways Commission Presentation – Julie White made the presentation on behalf of the Greenways Commission. She gave an overview of the Commissions’ recommendations and voiced support for two projects.

5. CONSENT AGENDA

Manager Harrold presented the consent agenda to the Town Council.

- A. Adoption of Minutes

Motion: *To adopt the minutes of the December 12, 2021 Regular Session Meeting, and the December 9, 2021 Agenda Meeting.*

- B. Call for Public Hearing for Rezoning of 713 NC 9 Hwy #Z-O-22-01

Motion: *To call for a public hearing for rezoning 713 NC 9 Hwy (PIN #: 0619-31-1541.00000) from TR-4 to HB-8 to be held on Monday, February 14, 2022, at 6:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 160 Midland Avenue.*

- C. Budget Amendment Carver Community Center Solar Panel Project

Motion: *To approve the budget amendment as presented.*

- D. Project Closure Ordinances and Amendment-Water Capacity Improvement

Motion: *To approve project closure ordinance for the Water Capacity Improvement Project as presented and recommended.*

- E. Budget Amendment Transfer for expenses paid for Swannanoa River Restoration out of the General Fund in Fiscal Year 19 and 20.

Motion: *To approve the budget amendment as presented.*

- F. Budget Amendment Transfer in of PD Restricted Fund Balance

Motion: *To approve the budget amendment as presented.*

G. Updated Greenway Commission Ordinance #O-21-18

Motion: *To approve and adopt Ordinance #O-21-18 as presented [or as amended].*

H. Budget Amendment Governor's Crime Commission Grant

Motion: *To approve the budget amendment as presented.*

Council Member Archie Pertiller moved to approve consent items A-H as presented. The motion was approved by a vote of 5-0.

6. CITIZEN COMMENTS - None

7. UNFINISHED BUSINESS - None

8. NEW BUSINESS

A. Board Appointments

Zoning Board of Adjustment – Two (2) 3-year terms ending June 30, 2024 and three (3) alternate vacancies.

Two applications were received for Zoning Board of Adjustment from Larry Pearlman and Lauren Dodgin. ZBA cannot meet due to lack of quorum until at least one seat is filled.

Vice Mayor Ryan Stone moved to appoint Larry Pearlman and Lauren Dodgin to the Zoning Board of Adjustment. The motion was approved by a vote of 5-0.

B. Golf Course Snack Shop Lease Agreement

The current tenant would like to renew the lease for another 12 months. There are no changes from the previous lease terms. The monthly lease payment is \$400.

Vice Mayor Ryan Stone moved to approve the lease agreement for the Golf Course Snack Shop (19th Hole). The motion was approved by a vote of 5-0.

C. Discussion of Buncombe County of Mask Mandate Extension

Mayor Harris explained that the purpose of this agenda item was to give the public a chance to

express their thoughts concerning the extension of the Buncombe County mask mandate. The Buncombe County Board of Commissioners has extended the countywide face covering requirement for all indoor public spaces through February 16, 2022. The indoor mask requirement also extends to Asheville, Biltmore Forest, Black Mountain, Town of Montreat, Weaverville, and Woodfin. There were no comments. Vice Mayor Ryan Stone thanked Mayor Harris for joining the extension and voiced support for continuing to follow the county's recommendations.

9. PUBLIC HEARING

The chair will recognize individuals requesting to address the Council regarding the specific topic of the public hearing. Public hearing comments by any on speaker shall be limited to ten (10) minutes. The Mayor reserves the right to alter time limits and other rules of procedure at the beginning of each Public Hearing.

A. Public Hearing to Add Text for Mobile Food Vendors and Mobile Food Vendor Courts #O-21-20

Council Member Pam King moved to open the public hearing for Ordinance #O-21-20 for amendments to add text for mobile food vendors and mobile food vendor courts. The motion was approved by a vote of 5-0.

Planning Director Jessica Trotman presented the information concerning Ordinance #O-21-20. The Town currently does not have any regulations for mobile food vendors or mobile food vendor courts. The proposed text provides a list of requirements to operate as a mobile food vendor or mobile food vendor court and the districts in which they are allowed. The Planning Board recommended the amendment at their November 22nd meeting with a vote of 6-0.

Town Manager Josh Harrold read two public comments that were sent via email. The first was from John Richardson, 117-C Cherry St; and Casey McKissick, 107 Black Mountain Ave. The comments are included and made part of these minutes. There were no further public comments.

Council Member Archie Pertiller moved to close the public hearing. The motion was approved by a vote of 5-0.

There was a good deal of discussion among the council, Attorney Stearns, and the Planning Director. All agreed that language should be added to the ordinance to clarify requirements for food vendors at private events.

Council Member Bill Christy moved to adopt Ordinance #O-21-20 as amended with clarifying language. The motion was approved by a vote of 5-0.

10. COMMUNICATION FROM STAFF

Town Manager – Josh Harrold reminded the public of the upcoming special call meeting, and that town offices will be closed on January 17, 2022 in observance of Martin Luther King, Jr. Day.

11. COMMUNICATION FROM MAYOR AND TOWN COUNCIL

Council Member King reminded the public to take the Town’s composting survey. She asked the council to consider holding a workshop to discuss American Rescue Plan Funding, and to establish a timeline for public input on how best to spend the funds.

12. ADJOURNMENT

There being no further business, Mayor Harris adjourned the meeting at 7:16 p.m.

ATTEST:

Savannah M. Parrish Town Clerk

Larry B. Harris, Mayor

Josh Harrold, Town Manager



**TOWN OF BLACK MOUNTAIN TOWN COUNCIL
SPECIAL CALL MEETING MINUTES
January 28, 2022**

***THE BLACK MOUNTAIN TOWN COUNCIL** held a special called meeting on Friday, January 28, 2022 at 8:30 a.m. in the board room of Town Hall, 160 Midland Avenue, Black Mountain NC. The purpose of this meeting is for the Town Council is to discuss town finances.*

Mayor Larry Harris called the meeting to order at 8:30 a.m. with the following members present:

Mayor Larry B. Harris
Vice Mayor Ryan Stone - absent
Council Member Archie Pertiller
Council Member Ryan Stone
Council Member Bill Christy
Council Member Doug Hay
Council Member Pam King

The following staff members were present:

Josh Harrold, Town Manager
Savannah Parrish, Town Clerk
Tammy Holland, Finance Director
Jessica Trotman, Planning Director

Mayor Harris welcomed the public and called the meeting to order. Ted Cole from Davenport Public Finance led the discussion. Mr. Cole is senior vice president and manager of public finance for Davenport.

The presentation covered several subjects including a credit rating overview, debt profile, and general fund operations and fund balance. A copy of Mr. Cole's presentation is included and made part of these minutes. Mr. Cole concluded town could take on some additional debt and still compare well to highly rated communities. The town's existing debt remains at an assessed value of 0.13%.

There was some discussion among Mr. Cole, the Town Manager, and the Town Council. Mayor Harris stated that he felt it was important to also consider reserving debt capacity in case of emergencies.

There being no further discussion, Mayor Larry B. Harris adjourned the meeting at 9:38 a.m.

ATTEST:

Savannah Parrish, Assistant to Manager/Town Clerk

Larry B. Harris, Mayor

Josh Harrold, Town Manager

Veterans Park South

Black Mountain, NC

2019



Dr. John Wilson Community Garden

Children and Friends Enrichment Center

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INTRODUCTION

Project Description

The Asheville Design Center worked with the Town of Black Mountain from November 2017 to December 2018 on two projects, both located in Veterans Park South. The first project was to develop a Conceptual Master Plan including site improvements and new development for the existing, on-site Dr. John Wilson Community Garden (JWCG). The second project developed a feasibility and massing study for Children and Friends Enrichment Center (C&F) to determine the park's capability to support the proposed new use and relocation of the daycare center onto the site.

Veterans Park was created in 1991 to provide community members a place to play, walk, fish, gather, exercise, and relax within a 27.2-acre parcel situated on the southwest side of the Town of Black Mountain. The park is located in a wide, flat valley bordering the Swannanoa River. For this project, we focused on the southern portion of Veterans Park only – a 10.10 acre parcel just south of I-40. Amenities in Veterans Park South include a greenway, disc golf course, community garden, and the Grey Eagle Rec Center.

Process

The Asheville Design Center is a nonprofit started in 2006 to help build livable communities in Asheville by providing asset-based planning and design services. We bring a multi-disciplinary group of designers together to work with clients in a participatory process that results in design solutions that are community-driven.

For the Veterans Park project, the following volunteers participated as members of the design team:

John Wilson Community Garden

Laura Evans (Landscape Architect)

Tripp Anderson (Architect with Aiton Anderson Architecture)

Children and Friends Daycare

Maria Rusafova (Architect with Rusafova-Markulis Architects)

Jesse Gardner (Engineer with Civil Design Concepts)

Project Management

Tania McCamy (Project Manager with the Asheville Design Center)

Chris Joyell (Director of Asheville Design Center)

Methodology

Methods for gaining an understanding of the needs and desires for the community garden and the daycare center:

Site visits and site inventory by the design team.

Review of maps including property survey and county GIS

Zoning code review and property analysis

Meetings with JWCG and Children and Friends leadership, as well as Town of Black Mountain staff

Stakeholder workshops to gather input that informed design process

Public Input Meeting for JWCG to gather feedback on proposed concepts

Meeting and Workshop Timeline

November 29, 2017	Coordination meeting and site visit with JWCG and Town Staff
December 14, 2017	Coordination meeting and site visit with Children and Friends
February 9, 2018	Stakeholder Workshop 1: JWCG and Children and Friends
July 2, 2018	Stakeholder Workshop 2: JWCG and Children and Friends
December 15, 2018	JWCG Public Input Meeting

SITE ANALYSIS

Veterans Park South is a 10.10 acre parcel of land located at White Pine Drive, Black Mountain North Carolina. It is currently zoned as TR-4, Town Residential District.

Existing site conditions include:

- Greenway, Disc golf course, Community Garden, and Grey Eagle Rec Center
- 2 garden structures: Barn and storage shed
- Septic Field
- Overhead Utility and easement
- Fire Station
- Gravel parking lots
- Bordered by Swannanoa River to the East
- Site is partially in Floodplain and Floodway

Through a number of meetings with staff and stakeholders, the ADC design team was able to gather input on site assets, constraints, and improvements that helped to inform best uses of the site while guiding design processes.

ASSETS

- Greenway
- Grey Eagle Rec - Center
- Disc Golf Course
- Oak Trees on the hilltop
- Mountain Views
- Element of safety
- Feel of community

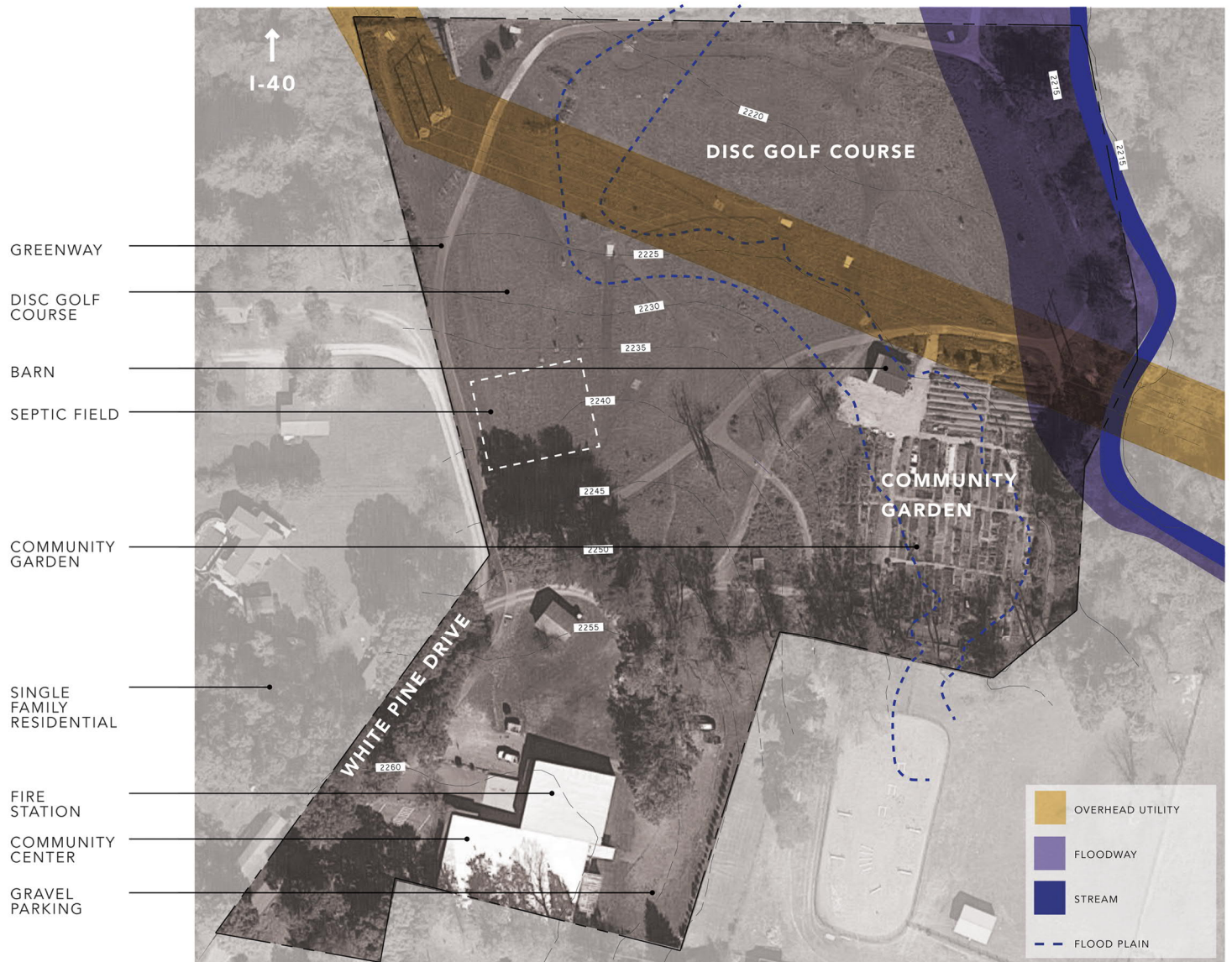
CONSTRAINTS

- Concerns over compatibility of daycare with existing uses.
- Erosion issues
- Future Exit 62 construction
- Fire truck noise/emissions
- Transmission lines and utility easement
- Impacts of increased traffic and daycare queue
- Loss of greenway due to new development.
(Equivalent yardage must be rerouted.)
- Accommodation of increased park facility users.

DESIRED IMPROVEMENTS

- Erosion control efforts
- Better/More parking
- Road improvements
- Public gathering spaces
- Restrooms
- Outdoor Kitchen (JWCG)
- Storage (JWCG)
- Playground (Children and Friends)

Site Conditions Map



DR. JOHN WILSON COMMUNITY GARDEN

About the John Wilson Community Garden (JWCG)

The Dr. John Wilson Community Garden (JWCG) was founded in 1997 by Dr. John Wilson and officially named in his honor in 2011. In 2004, its current location in Veterans Park was established. The garden's mission is to provide space where community members can grow vegetables for their own use, donate fresh vegetables to families in need, educate children and adults in the life-long skill of growing vegetables, and create community around gardening and the valuable lesson of sharing with others.

JWCG provides rental plots for local residents through Black Mountain Parks and Recreation. As of 2019, the garden is home to nearly 90 gardeners. Additionally, numerous volunteers provide over 2000 service hours annually, producing up to 4,000 pounds of produce a year for donation to families in need through Bounty and Soul. The garden thrives thanks to a strong network of community partners such as these.

Included in the garden are over one hundred fruit or nut bearing trees, bushes, and vines. A greenway trail encircles the garden and connects with the greater greenway system of Black Mountain. Along one border of the garden and paralleling the greenway is a three hundred foot long native plant and medicinal at-risk species trail. The trail is on the United Plant Savers national registry of Botanical Sanctuaries.



JWCG Project Description

The Asheville Design Center worked with John Wilson Community Garden staff to develop a conceptual master plan that includes property improvements as well as new, on-site development. The JWCG is a beloved community asset that wants to strengthen their role as a place for gathering and learning. This includes the desire to build an on-site outdoor kitchen and event space to hold community functions and educational opportunities such as classes and cooking demonstrations. The master plan also addresses the garden's need for better storage and office space. Using staff and stakeholder input, the ADC design team was able to develop a garden program based on these development needs as well as conceptual site designs that illustrate desired site improvements.

Outdoor kitchen needs:

- Public space for community and garden events, classes, picnics, etc
- Covered multi-function space for 100 people
- Catering kitchen/food prep area
- 2 unisex restrooms – could be composting toilets

Storage needs:

- secure and lockable space for tools, materials, hoses, etc.

Office needs:

- secure, lockable, and dry area for office use and weighing station

Site Improvement priorities include:

- Erosion solutions
- Additional parking
- ADA accessibility and improved pedestrian circulation
- Definition/Formalization of space with gateways and fencing
- Seating options
- Paving
- Garden signage
- Plantings
- Greenhouse
- Children's Playscape

Current Conditions



JWCG: SITE IMPROVEMENTS

The following images represent site improvement ideas for plantings, garden entrances, fencing and seating, paving and signage, and a children's play area. These improvements should serve to better formalize the space while capitalizing on existing assets and integrating with the current natural aesthetic.

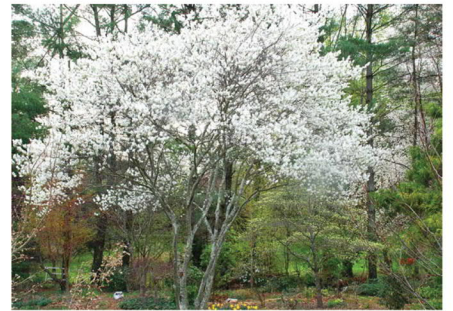
PLANTINGS



Asclepias incarnata,
Swamp Milkweed



Eryngium yuccifolium,
Rattlesnake Master



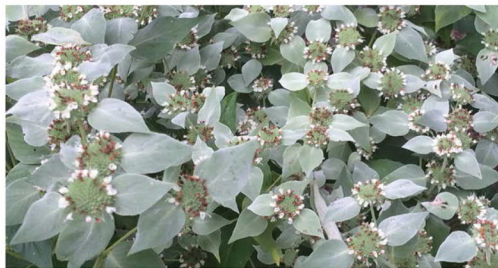
Amelanchier,
Serviceberry



Vaccinium angustifolium,
Tophat Blueberry



Monarda fistulosa,
Bergamot



Pycnanthemum muticum,
Mountain Mint



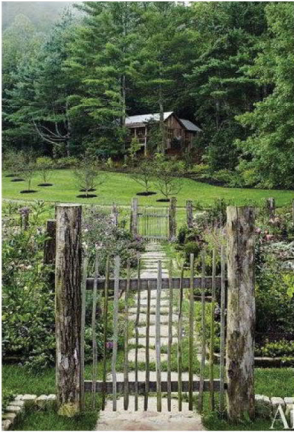
Rudbeckia Maxima,
Large Coneflower



Chionanthus virginicus,
Fringe Tree

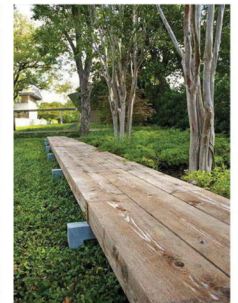
Garden Entrances

Garden entrances are to be placed strategically throughout the site. They serve to define the space and provide creative points of entry.



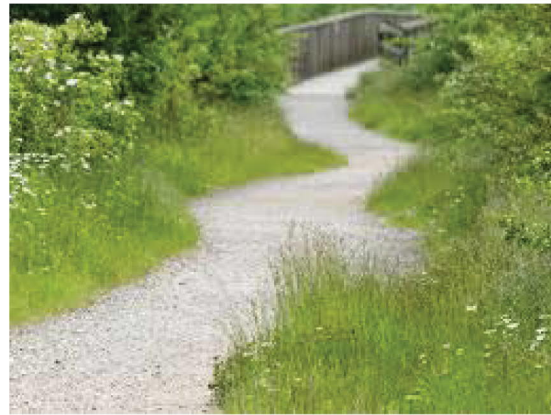
Fencing & Seating

The use of creative fencing will, again, help to better define the garden space. Seating will encourage users to relax, spend more time, and enjoy the space as they garden.



Paving and Signage

Paving treatments will help to formalize access and connectivity throughout the garden site. It will also help address current erosion concerns. Signage will offer fun and educational opportunities for users to better familiarize themselves with garden history and planting information.



Natural Playscape

The incorporation of a children's playspace will offer kids the opportunity for fun and engagement while families are using the garden space. Natural playscapes help kids connect to the natural environment through play. Often using non-traditional and loose materials, these playscapes encourage healthy creativity, experimentation, and discovery.



JWCG: BUILDING PROGRAM

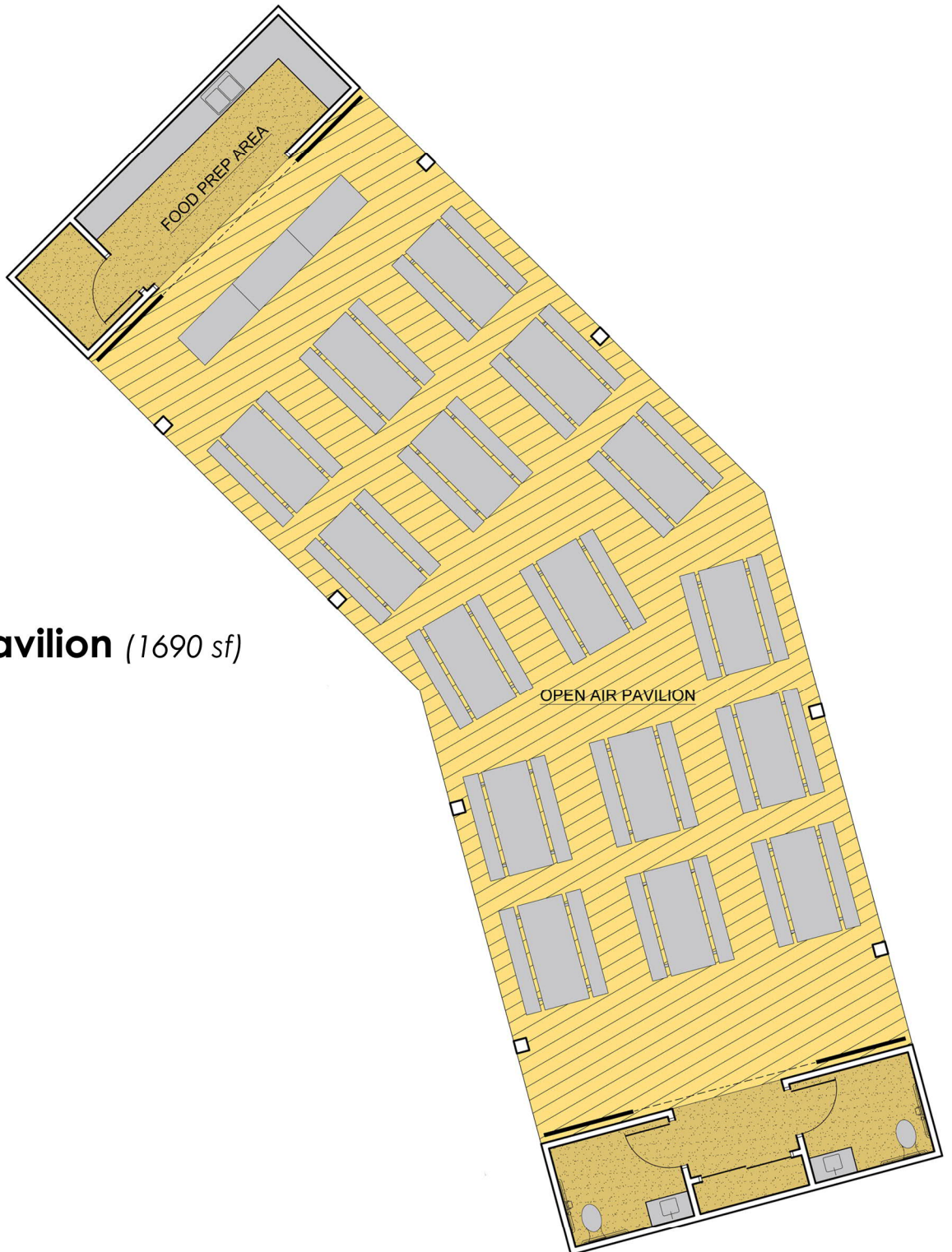
In addition to site improvements, the JWCG conceptual master plan addresses the garden's desire for an outdoor kitchen/gathering space, as well as improved storage and office areas. Over the course of several meetings with garden staff, the ADC design team was able to establish a program for the garden's current and proposed operational needs. The resulting structures should be located on site in a way that integrates well with operational procedures and garden functions.

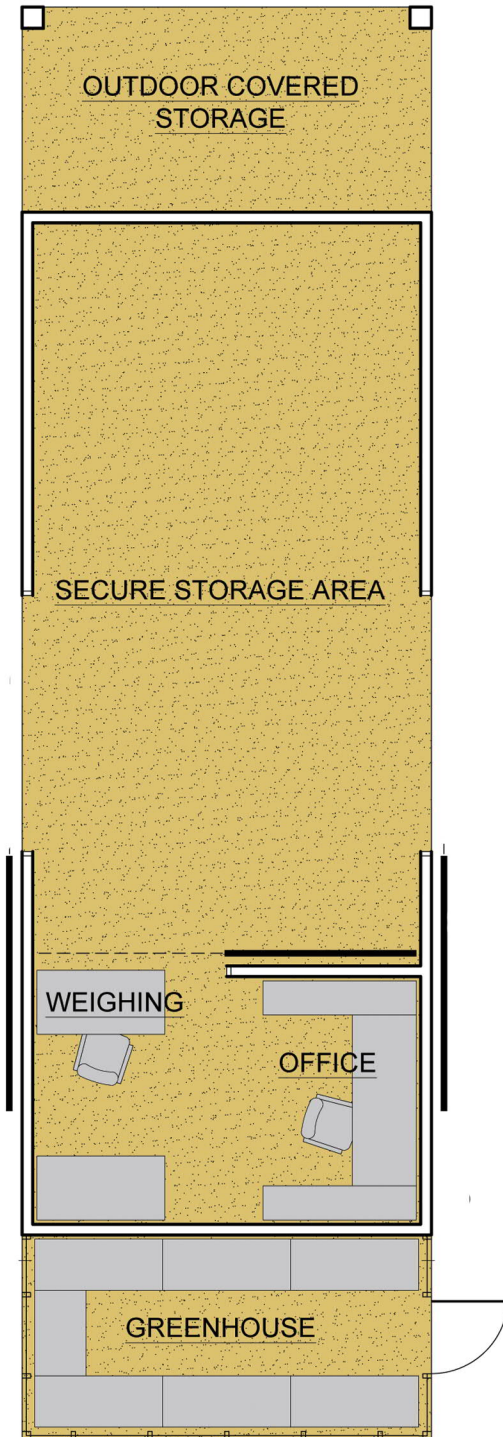
FUNCTION	AREA NEEDS
<u>Storage north – (existing pole barn is ±650 SF)</u>	
Tools and materials	400 SF secure storage
Hoop house storage	
Hoses	
Buckets & bins	
Other outdoor covered storage needs?	100 SF outdoor covered storage
* actual need is probably less than existing 650 SF	
<u>Existing barn also includes areas that should be better secured:</u>	
Paperwork area	100 SF lockable office
Weighing area	100 SF produce weighing area
* functions should be adjacent to north end of garden	
<u>Storage south – (existing shed is ±120 SF)</u>	
Tools and materials	150 SF secure storage
Wheelbarrows (outdoor under cover) ±50 SF (may need a bit more)	100 SF outdoor covered storage
* functions should be adjacent to south end of garden	
<u>Greenhouse</u>	100 SF greenhouse
* south facing full sun exposure, attached to another structure	
<u>Outdoor multi-function pavilion</u>	
A public space for community and garden events, social events, picnics	
Covered multi-function space for 100 people	1,500 SF (100 x 15sf per person)
Catering kitchen/food prep area	100 SF food prep counter area
Restrooms (2 unisex toilets) composting toilets like state parks?	100 SF (±40 SF each plus janitor closet)
	2,750 SF total

JWCG: Building Concepts

Based on the garden program, the ADC design team was able to create building concepts for the outdoor kitchen, storage, and office spaces.

Picnic Pavilion (1690 sf)





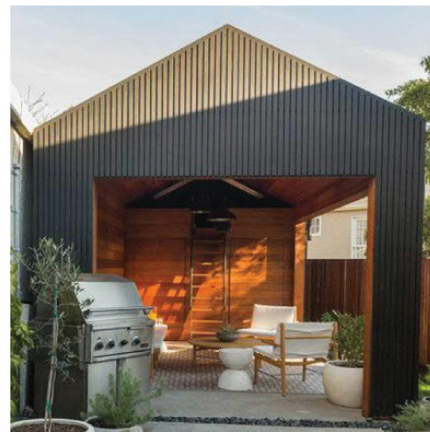
Garden Building (750 sf)



Garden Shed (250 sf)

Building Ideas

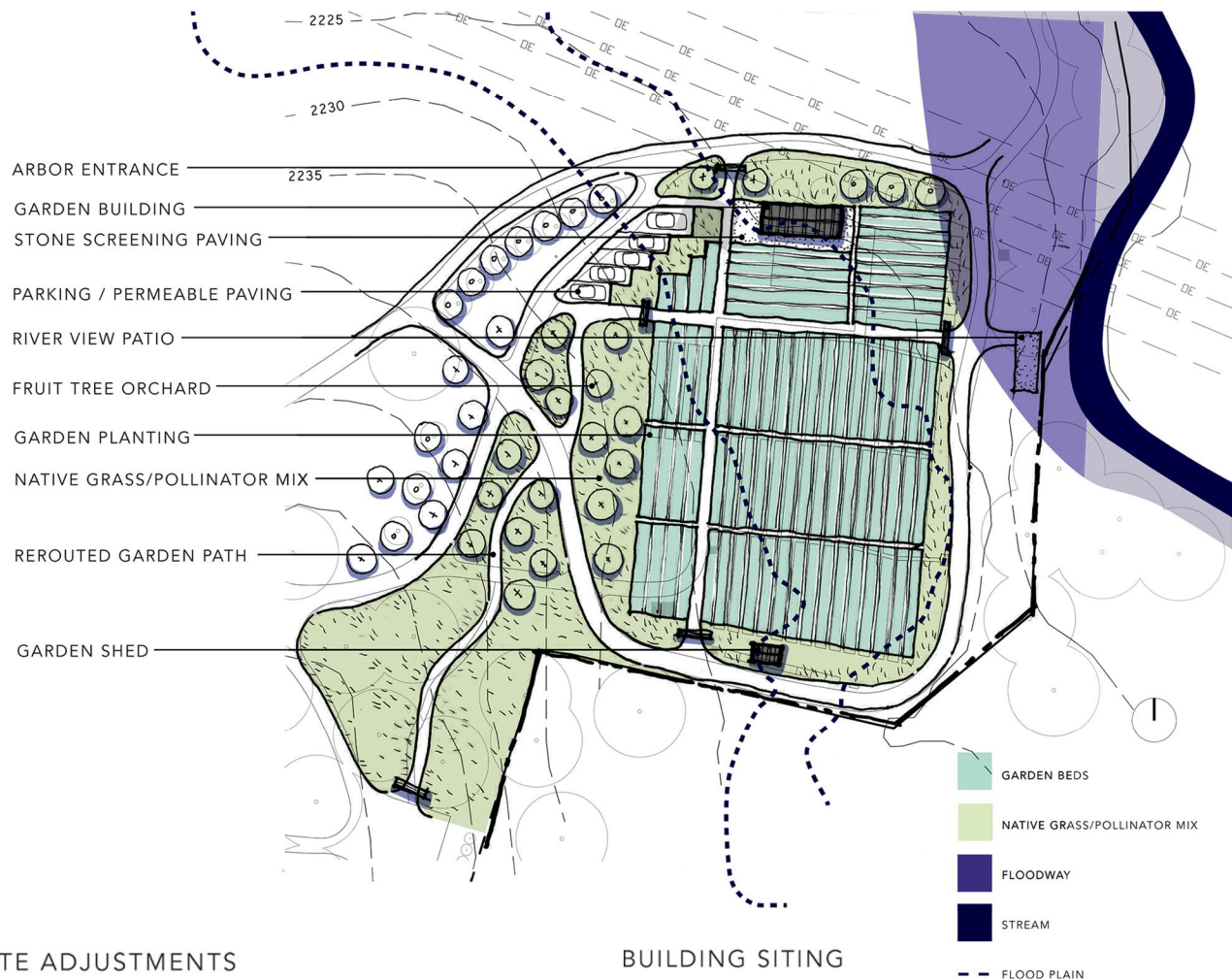
The recommended design aesthetic for the garden buildings uses natural and rustic materials that integrate well with the surrounding landscape. The picnic pavilion could be open-air in order to maintain the connection to the outdoors while providing cover from the elements. The pavilion will house the kitchen and restrooms. Composting toilets are an option. It is important that all garden buildings can be secured to prevent theft and vandalism.



JWCG: SITE DESIGN CONCEPTS

After careful review of staff and stakeholder feedback, the ADC design team created several conceptual site designs for the JWCG that demonstrate building siting and site improvement desires as identified during the input process.

Garden Concept A

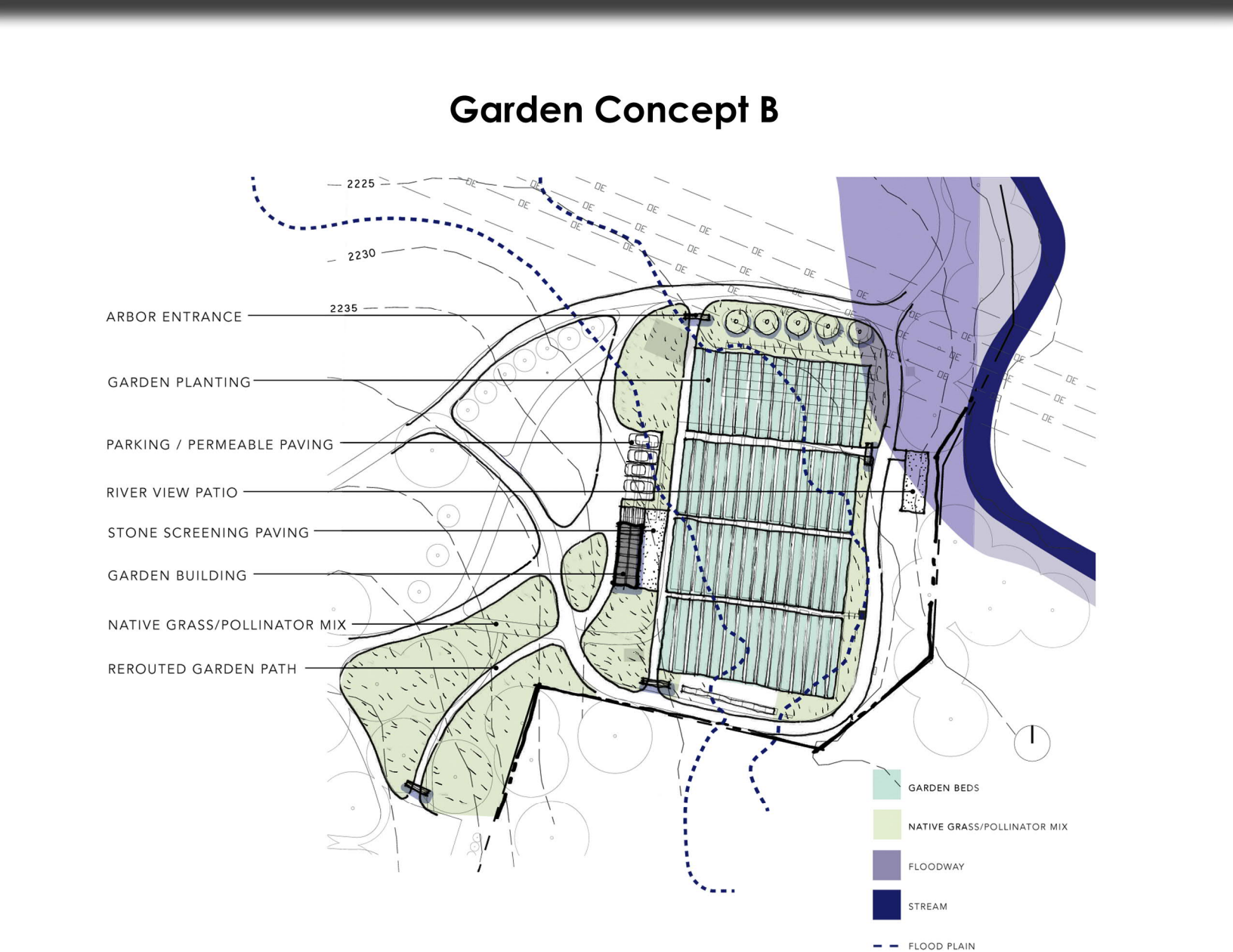


SITE ADJUSTMENTS

- pedestrian path re-routed to follow topography and help with stormwater issues
- unmowed/pollinator planting area around garden will increase stormwater infiltration
- gravel patio at river for resting to take advantage of view
- new arbors at all garden paths to signify entry and provide uniformity

BUILDING SITING

- flat area requiring minimal grading
- would provide physical screen between garden and highway
- placement + orientation facilitates outdoor performances /use as stage
- within floodplain and may require elevation and pose ADA issues
- retains existing vehicular route to reduce grading



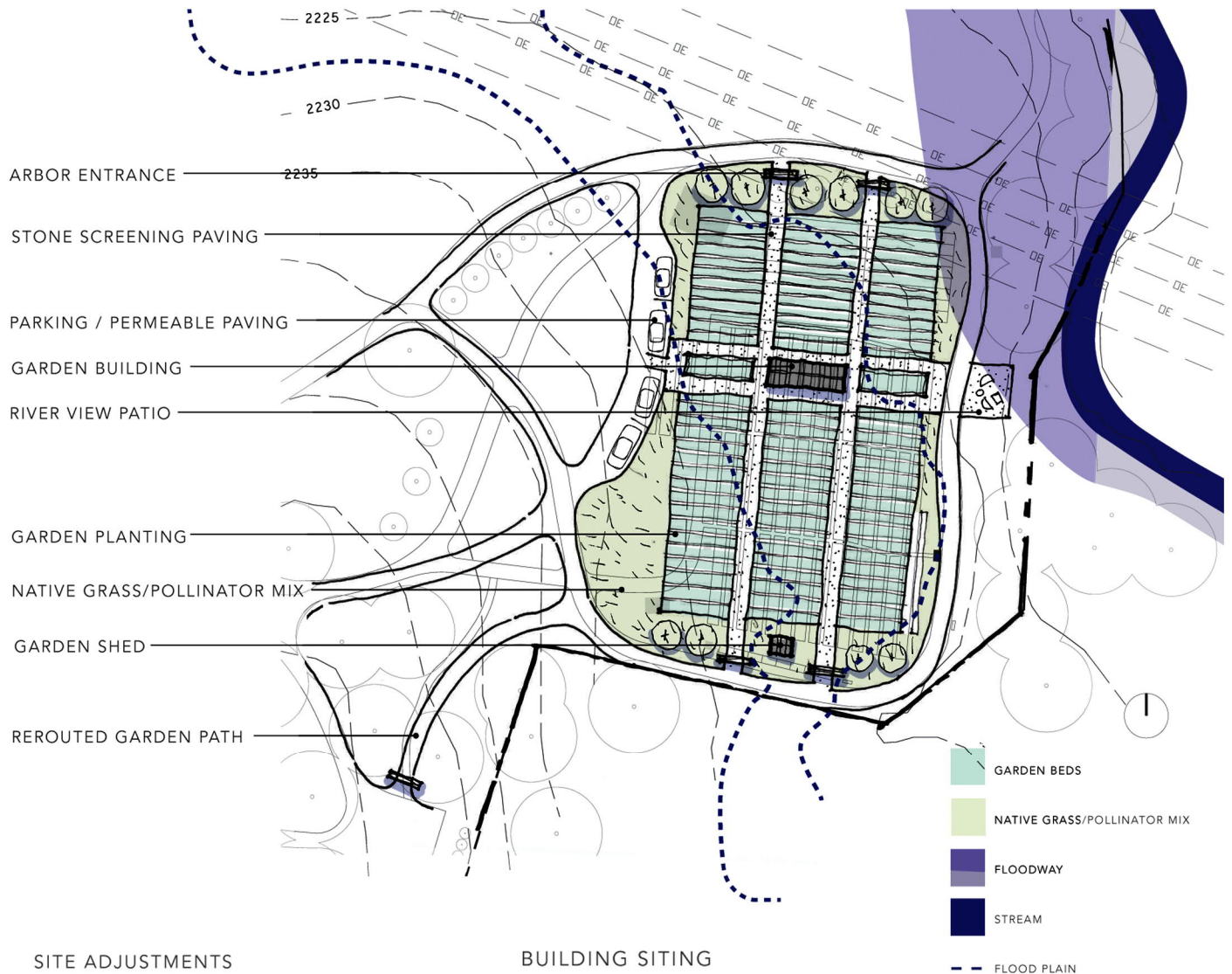
SITE ADJUSTMENTS

- pedestrian path re-routed to follow topography and help with stormwater issues
- unmowed/pollinator planting area around garden will increase stormwater infiltration
- gravel patio at river for resting to take advantage of view
- new arbors at all garden paths to signify entry and provide uniformity

BUILDING SITING

- out of floodplain but will require more significant grading
- re-routed vehicular route will require additional grading

Garden Concept C



SITE ADJUSTMENTS

- parallel parking
- expanded pathways and gathering spaces
- pedestrian path re-routed to follow topography and help with stormwater issues
- unmowed/pollinator planting area around garden will increase stormwater infiltration
- gravel patio at river for resting to take advantage of view
- new arbors at all garden paths to signify entry and provide uniformity

BUILDING SITING

- central location within garden
- within floodplain
- re-routed vehicular route will require additional grading

Garden Concept D: (Recommended)

PICNIC PAVILION SITING

- out of floodplain and utility corridor
- convenient and inviting to all visitors

GARDEN BUILDING SITING

- approximately in existing barn location
- aligns with garden pathways
- screens parking from garden

SITE ADJUSTMENTS

- pedestrian path re-routed and expanded to allow for easier circulation throughout garden
- stabilized stone screenings or mulch patio at river for resting to take advantage of view
- new low gateways at all garden paths to signify entry and provide uniformity
- natural playscape elements added to engage visiting children with natural materials and imaginative play

COMPOST MAKING AREA WITH 4' HIGH FENCE SURROUND

PARKING / PERMEABLE PAVING

GARDEN BUILDING

WOODCHIP STORAGE

MAIN PATHWAYS TO BE 4 FT WIDE, GARDEN PATHS TO BE 2 FT WIDE, COMPOSED OF STABILIZED GRAVEL SCREENINGS OR WOODCHIPS

PICNIC PAVILION

RE-ROUTED GARDEN PATH

NATURAL PLAYSCAPE

EDIBLE + POLLINATOR PLANTING

RAISED GARDEN BEDS

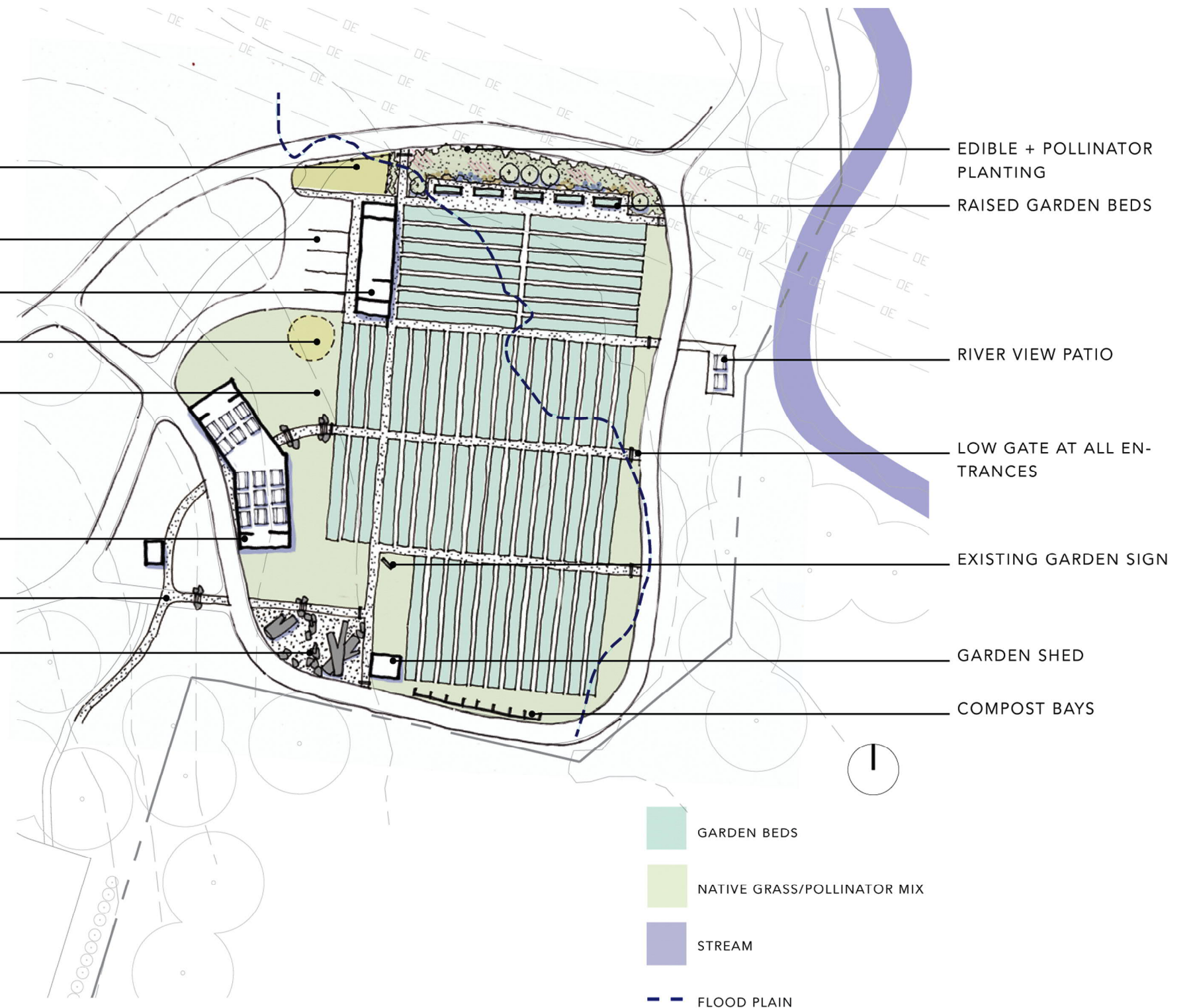
RIVER VIEW PATIO

LOW GATE AT ALL ENTRANCES

EXISTING GARDEN SIGN

GARDEN SHED

COMPOST BAYS



JWCG: Budget

The following is a general recommendation of a construction budget (not an overall project budget) given by the project architect. This IS NOT a quote from a contractor. This is a 2019 estimate given the architect's experience with similar and comparable projects. Escalation and contingency are not calculated in this estimate and must be considered for future projections. It is recommended that 10-15% be added for contingency and 2.5 – 3% for escalation per additional year. Also not accounted for are any demolition, survey, testing, consulting, and/or design fees to be incurred during project development. This budget does account for contractor overhead and profit estimated at 15%. This will vary depending on the contractor.

Building 1 (Picnic Pavilion) 1690 sf
 Building 1 (enclosed) 380 sf
 Building 2 (Garden Bldg) 750 sf
 Greenhouse 125 sf
 Building 3 (Garden Shed) 250 sf

	DESCRIPTION	3,195	SF	TOTAL	COST	MATERIAL		LABOR		SUBCONTRACTORS	
		QTY	UNITS	COST	/SF	UNIT \$	COST	UNIT \$	COST	UNIT \$	COST
1.1	General Conditions	3,195	SF	15,975	5.00		-	5.00	15,975		-
2.1	Sitework	1	LS	10,000	3.13		-		-	10,000.00	10,000
2.2	Demolition	-	LS	-	-		-		-	10,000.00	-
2.3	Utilities	1	LS	12,000	3.76		-		-	12,000.00	12,000
3.1	Foundations	3,195	SF	31,950	10.00		-		-	10.00	31,950
4.1	Masonry	-	SF	-	-		-		-	14.00	-
4.2	Masonry veneer	-	FF	-	-		-		-	4.00	-
5.1	Steel	-	SF	-	-		-		-	35.00	-
5.2	Stairs & rails	-	LS	-	-		-		-	65,000.00	-
6.1	Structure wood frame	3,195	SF	111,825	35.00		-		-	35.00	111,825
7.1	Moisture & Thermal	3,195	SF	6,390	2.00		-		-	2.00	6,390
7.2	Roofs	3,195	SF	22,365	7.00		-		-	7.00	22,365
8.1	Doors	6	LS	3,000	0.94		-		-	500.00	3,000
8.2	Windows	3	LS	1,500	0.47		-		-	500.00	1,500
8.3	Barn doors	6	LS	6,000	1.88		-		-	1,000.00	6,000
9.1	Interior walls	-	FF	-	-		-		-	12.00	-
9.2	Finishes	3,195	SF	31,950	10.00		-		-	10.00	31,950
14	Elevator	-	LS	-	-		-		-	127,500.00	-
15.1	Plumbing	380	SF	9,500	2.97		-		-	25.00	9,500
15.2	Fire suppression	-	SF	-	-		-		-	3.00	-
15.4	HVAC	380	SF	7,600	2.38		-		-	20.00	7,600
16.1	Electrical & lighting	1,690	SF	33,800	10.58		-		-	20.00	33,800
				-	-		-		-		-
				-	-		-		-		-
				-	-		-		-		-
				-	-		-		-		-
	TOTAL COST			287,880	90.10		-		-		287,880
	Overhead & Profit	15.0%		43,182	13.52						
	SUB TOTAL			331,062	103.62						
	Escalation	0.0%		-	-						
	Contingency	0.0%		-	-						
	PROJECT TOTAL			331,062	103.62						

JWCG: FINAL RECOMMENDATION

After careful review and consideration from staff and stakeholder input, the ADC design team finalized a conceptual site plan to best address garden concerns, needs, and desires for future development. **Concept D, page 20, is the recommended concept for the JWCG.**

To note with this concept is the siting of the three proposed buildings: the picnic pavilion, the garden building, and the garden shed. The picnic pavilion, which houses the outdoor kitchen, event space, and restrooms, is shown on the hilltop at the western edge of the garden as you look down and enter into the garden space. The proximity and visibility that this location provides is intended to make the pavilion convenient and accessible to ALL park users rather than acting as an exclusive use for the garden only. This inclusivity is important to garden staff to successfully articulate their vision for an inviting, community-oriented space. The garden building that will function as an office, weigh station, and storage space is shown to be sited in the approximate location of the existing barn. This location is adjacent to garden parking which will best accommodate loading, unloading, and weighing of produce. We suggest that the garden consider the option to adaptively reuse the existing barn through upgrades and renovation. Doing so may be a more financially viable option for them. The existing garden shed which will be used for tools and equipment is to remain in its current location.

The final site design concept also reflects the many desired site improvements. To note are the rerouted pedestrian paths for improved circulation, paving treatments to address erosion issues, gateways at all pathways to signify entry and uniformity, additional and formalized parking spaces for garden users, and the addition of edible and pollinator plantings that provide a natural, beautiful, and functional northern border that will also serve to screen the highway.

A fun, new element is the natural playscape that will allow children to play and enjoy the space while families are using the garden. Also, the addition of a river view patio adjacent to the Swannanoa River will offer the opportunity to gather, relax, and/or have a meal while capitalizing on the beautiful vantage point.

The overall concept of this master plan is to embrace what is while making improvements that fit into the existing site and structure.

NEXT STEPS FOR JWCG

- Organize and implement fundraising efforts
- Consider a PR strategy to build project support and aide fundraising
- Hire multi-disciplinary design team to develop and refine the ADC recommended concept
- Develop construction phasing plan and strategy
- Work with Town of Black Mountain and Buncombe Co. for necessary permitting
- Begin construction of first phases. Keep public informed of construction schedule and impact to park facilities

**TOWN OF BLACK MOUNTAIN TOWN COUNCIL
REQUEST FOR COUNCIL ACTION**

Meeting Date: February 14, 2022

SUBJECT: Jacobs Cottages Water Line Acceptance

AGENDA INFORMATION

Agenda Location: NEW BUSINESS
Item Number: 8C
Department: Administration
Contact: Josh Harrold, Town Manager
Presenter: Josh Harrold, Town Manager

BRIEF SUMMARY: Jacobs Cottages subdivision was approved in 2016. Water lines for the subdivision have been installed to meet Town and State specifications. The developer requests the Town assume ownership of the water lines and bring them into the Town's water system. Town staff has reviewed these plans and recommends acceptance of the Jacobs Cottages water lines.

MOTION FOR CONSIDERATION: To accept the water lines in Jacobs Cottages into the Town water system.

FUNDING SOURCE: N/A

ATTACHMENTS: water line specifications

MANAGER'S COMMENTS AND RECOMMENDATIONS: To accept as presented.

TOWN OF BLACK MOUNTAIN TOWN COUNCIL
REQUEST FOR COUNCIL ACTION
Meeting Date: February 14, 2022

SUBJECT: Summer Camp Fee Schedule Amendment

AGENDA INFORMATION

Agenda Location: NEW BUSINESS
Item Number: 8D
Department: Recreation and Parks
Contact: Joshua Henderson, Recreation Director
Presenter: Joshua Henderson, Recreation Director

BRIEF SUMMARY: The summer camp weekly rate is currently \$180 per child. This has been the weekly rate since 2015. We would like to raise the weekly rate by \$10, to the weekly cost of \$190 per child for the upcoming summer (2022). This cost is still below many day camps in our area. We know families in the valley need help in the summers, so want to keep the cost affordable. Camp registration typically opens at the end of February

MOTION FOR CONSIDERATION: To approve the summer camp fee schedule amendment as presented.

FUNDING SOURCE:

ATTACHMENTS:

MANAGER'S COMMENTS AND RECOMMENDATIONS:

TOWN OF BLACK MOUNTAIN TOWN COUNCIL
REQUEST FOR COUNCIL ACTION
Meeting Date: February 14, 2022

SUBJECT: Text Amendment Phase II Post Construction Stormwater Ordinance

AGENDA INFORMATION

Agenda Location: NEW BUSINESS
Item Number: 8E
Department: Planning and Development
Contact: Jessica Trotman, Planning Director
Presenter: Jessica Trotman, Planning Director

BRIEF SUMMARY: Staff is developing a set of specific permitting controls for all types of development that more directly address the water quality concern created by the activity. This is the first step in this process. The text amendment removed “disturbance” so post-construction permitting is required by the amount of impervious area created. This remains 5,000 square feet. The addition to the ordinance is new, but only clarifying language. Projects under a common plan (example, 3 houses each on their own lot) are required to get a post construction stormwater permit. Whether or not the plan includes one SCM, or three small SCMs is up to the owner and their engineer.

MOTION FOR CONSIDERATION:

FUNDING SOURCE: N/A

ATTACHMENTS: Revised ordinance

MANAGER’S COMMENTS AND RECOMMENDATIONS: To approve the amendment as presented.

SECTION 8.2 THE PHASE II STORMWATER ORDINANCE¹

8.2.1 Purpose.

- (A) *General.* The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment as well as illicit discharges into municipal stormwater systems. It has been determined that proper management of post-development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

The ordinance seeks to meet the requirements for the town's National Pollutant Discharge Elimination System (NPDES) Permit.

This ordinance seeks to meet its general purpose through the following specific objectives and means:

- (1) Establishing decision-making processes for development that protect the integrity of watersheds and preserve the health of water resources;
- (2) Requiring that new development and redevelopment maintain the predevelopment hydrologic response in their post-development state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
- (3) Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
- (4) Establishing design and review criteria for the construction, function, and use of structural stormwater SCMs that may be used to meet the minimum post-development stormwater management standards;
- (5) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
- (6) Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater SCMs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
- (7) Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance.

¹Editor's note(s)—Ord. No. O-19-21 , adopted October 14, 2019, effective December 1, 2019, repealed the former Section 8.2, §§ 8.2.1—8.2.29, and enacted a new Section 8.2 as set out herein. The former Section 8.2 pertained to similar subject matter and derived from the Prior Code.

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- (8) Coordinating site design plans that include open space with the subdivision ordinance requirements for open space with the zoning administrator or planning board if required.
 - (9) Assigning responsibility and processes for approving the creation and maintenance of adequate drainage measures.

8.2.2 Applicability and jurisdiction of this ordinance.

- (A) *General.* Beginning with and subsequent to its effective date, this ordinance shall be applicable to all development and redevelopment occurring in within the corporate limits of the Town of Black Mountain, unless exempt pursuant to section 8.2.2(C) of this section, exemptions.
- (B) *Activity threshold requiring a stormwater permit.* A stormwater permit is required for any development and redevelopment which results in a ~~cumulative disturbance of more than 5,000 square feet of land or~~ increases impervious surface area by a net amount of 5,000 square feet or more ~~if the project has less than or equal to one-acre of cumulative disturbance.~~ Projects developed under a common plan creating more than 5,000 square feet of impervious surface, regardless of the number of parcels included in the plan. All phased developments must achieve post-construction requirements at the completion of each phase unless otherwise approved by the stormwater administer.
- (C) *Exemptions.*
 - (1) Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.
 - (2) Development which cumulatively disturbs less than 5,000 square feet of land and is not part of a larger common plan of development does require a stormwater permit.
 - (3) Pre-existing development or development activities that do not remove or decrease existing stormwater controls shall not be required to install new or increased stormwater controls.
 - (4) When a pre-existing development is redeveloped, either in whole or in part, increased stormwater controls shall only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before redevelopment.
 - (5) Development activities within the town's designated historic district.
- (D) *No development or redevelopment until compliance and permit.* No development or redevelopment shall occur except in compliance with the provisions of this ordinance unless exempted. No development for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.
- (E) *Map.* The stormwater map shall be kept on file by the stormwater administrator and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all structural SCMs permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or SCM shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

8.2.3 Interpretation.

- (A) *Meaning and intent.* All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in section 8.2.1, purpose and also defined in section 8.2.28. If a different or more specific meaning is given for a term defined elsewhere in Town of

Black Mountain Code of Ordinance, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

- (B) *Text controls in event of conflict.* In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control
- (C) *Authority for interpretation.* The stormwater administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the stormwater administrator, who shall respond in writing within 30 days. The stormwater administrator shall keep on file a record of all written interpretations of this ordinance.
- (D) *References to statutes, regulations, and documents.* Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the design manual), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.
- (E) *Computation of time.* The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town of Black Mountain, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town of Black Mountain. References to days are calendar days unless otherwise stated.
- (F) *Delegation of authority.* Any act authorized by this Ordinance to be carried out by the Planning Director of Town of Black Mountain may be carried out by his or her designee as Stormwater Administrator.

8.2.4 Design manual.

- (A) *Reference to design manual.* The stormwater administrator shall use the policy, criteria, and information, including technical specifications and standards, in the design manual as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and non-structural stormwater SCMs.

The design manual includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.

- (B) *Relationship of design manual to other laws and regulations.* If the specifications or guidelines of the design manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the design manual.
- (C) *Changes to standards and specifications.* If the standards, specifications, guidelines, policies, criteria, or other information in the design manual are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.
- (D) *Amendments to design manual.* The design manual may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience.

Prior to amending or updating the design manual, proposed changes shall be generally publicized and made available for review, and an opportunity for comment by interested persons shall be provided.

8.2.5 Relationship to other laws, regulations and private agreements.

- (A) *Conflict of laws.* This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.
- (B) *Private agreements.* This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall Town of Black Mountain be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

8.2.6 Severability.

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

8.2.7 Effective date and transitional provisions.

- (A) *Effective date.* This ordinance shall take effect on December 1, 2019.
- (B) *Final approvals, complete applications.* All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Black Mountain prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of development or redevelopment shall be exempt from complying with all provisions of this ordinance dealing with management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions. If previously approved SCMs are not maintained as approved and regulated by the stormwater ordinance in effect at the time of their approval, such LCMs must be made to comply with this ordinance to the greatest extent possible when repaired or brought into compliance.

A phased development plan shall be deemed approved prior to the effective date of this ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

- (1) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.
 - (2) For any subsequent phase of development, sufficient detail so that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.
- (C) *Violations continue.* Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, development, construction, or other activity complies with the provisions of this ordinance.

SECTION 2: ADMINISTRATION AND PROCEDURES

8.2.8 Review and decision-making entities.

(A) *Stormwater administrator.*

- (1) *Designation.* A stormwater administrator shall be designated by the planning director to administer and enforce this ordinance in whole or in part, at the planning director's discretion.

(B) *Powers and duties.* In addition to the powers and duties that may be conferred by other provisions of the Town of Black Mountain Code of Ordinances and other laws, the stormwater administrator shall have the following powers and duties under this ordinance:

- (1) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- (2) To make determinations and render interpretations of this ordinance.
- (3) To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- (4) To maintain records, maps, forms and other official materials as related to the adoption, amendment, enforcement, and administration of this ordinance.
- (5) To provide expertise and technical assistance to the Town of Black Mountain Board of Alderman, upon request.
- (6) To designate appropriate other person(s) who shall carry out the powers and duties of the stormwater administrator.
- (7) To take any other action necessary to administer the provisions of this ordinance.

8.2.9 Review procedures.

(A) *Permit required; must apply for permit.* A stormwater permit is required for all development and redevelopment unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section. A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including structural SCMs and elements of site design for stormwater management other than structural SCMs.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this ordinance, whether the approach consists of structural SCMs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.

(B) *Authority to file applications.* All applications required pursuant to this Code shall be submitted to the stormwater administrator by the land owner or the land owner's duly authorized agent.

(C) *Establishment of application requirements, schedule, and fees.*

- (1) *Application contents and form.* The stormwater administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.

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- (2) *Submission schedule.* The stormwater administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.
 - (3) *Permit review fees.* The Town of Black Mountain Board of Alderman shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.
 - (4) *Administrative manual.* For applications required under this ordinance, the stormwater administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the design manual in an administrative manual, which shall be made available to the public.
- (D) *Submittal of complete application.* Applications shall be submitted to the stormwater administrator pursuant to the application submittal schedule in the form established by the stormwater administrator, along with the appropriate fee established pursuant to this section. An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the stormwater administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.
- (E) *Review.* Within 15 working days after a complete application is submitted, the stormwater administrator shall review the application and determine whether the application complies with the standards of this ordinance.
- (1) *Approval.* If the stormwater administrator finds that the application complies with the standards of this ordinance, the stormwater administrator shall approve the application. The stormwater administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.
 - (2) *Fails to comply.* If the stormwater administrator finds that the application fails to comply with the standards of this ordinance, the stormwater administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.
 - (3) *Revision and subsequent review.* A complete revised application shall be reviewed by the stormwater administrator within 15 working days after its re-submittal and shall be approved, approved with conditions or disapproved.
- If a revised application is not re-submitted within 30 calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.
- One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this ordinance.

8.2.10 Applications for approval.

- (A) *Concept plan and consultation meeting required.* Before a stormwater management permit application is deemed complete, the stormwater administrator or developer shall request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary plan of subdivision or

other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, the town's comprehensive plan and land use code, and other relevant resource protection plans should be consulted in the discussion of the concept plan.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

- (1) *Existing conditions/proposed site plans.* Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
 - (2) *Natural resources inventory.* A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development and stormwater management.
 - (3) *Stormwater management system concept plan.* A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.
- (B) *Stormwater management permit application.* The stormwater management permit application shall detail how post development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including section 8.2.13, standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the design manual, and that the designs and plans ensure compliance with this ordinance.
- The submittal shall include all of the information required in the submittal checklist established by the stormwater administrator. Incomplete submittals shall be treated pursuant to section 8.2.9 (D).
- (C) *As-built plans and final approval.* Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual "as built" plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs

and with the requirements of this ordinance. A final inspection and approval by the stormwater administrator shall occur before the release of any performance securities.

- (D) *Other permits.* No certificate of compliance or occupancy shall be issued by the building inspector without final as-built plans and a final inspection and approval by the stormwater administrator, except where multiple units are served by the stormwater practice or facilities, in which case the building inspector may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

8.2.11 Approvals.

- (A) *Effect of approval.* Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.
- (B) *Time limit/expiration.* An approved plan shall become null and void if the applicant fails to make substantial progress on the site within one year after the date of approval. The stormwater administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

In granting an extension, the stormwater administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

8.2.12 Appeals.

- (A) *Right of appeal.* Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the stormwater administrator, may file an appeal to the zoning board of adjustment within 30 days.

SECTION 3: STANDARDS

8.2.13 General standards.

All development and redevelopment to which this ordinance applies shall comply with the standards of this section.

8.2.14 Development standards for all permitted projects.

High and low density projects shall comply with each of the following standards requiring a stormwater permit:

- (A) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.
- (B) Project sites must employ low impact development (LID) practices to analyze the infiltration capacity of natural drainage of the site and develop a system of controls which mimic the existing, natural hydrology and which cumulatively capture and treat the runoff from the first inch of rainfall. LID practice may include any combination of site design techniques, and SCMs to store, infiltrate, evaporate, retain and detain runoff on the site to more closely replicate the pre-development runoff thereby limiting the increase in pollutant loads caused by development.
- (C) All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is

approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division-approved methodology. Encroachment allowances may be made as described in 4.3.2.

- (D) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.
- (E) The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
- (F) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85 percent average annual removal for total suspended solids (TSS);
- (G) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the design manual;

8.2.15 Standards for stormwater control measures.

Owners of property subject to this ordinance and required to install structural stormwater control measures shall implement those measures in compliance with each of the following standards:

- (A) *Evaluation according to contents of design manual.* All stormwater control measures and stormwater treatment practices (also referred to as Stormwater Control Measures, or SCMs) required under this ordinance shall be evaluated by the stormwater administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the design manual. The stormwater administrator shall determine whether proposed SCMs will be adequate to meet the requirements of this ordinance. It is presumed that all standards in the design manual will result in a minimum of 85 percent average annual removal of total suspended solids.
- (B) *Determination of adequacy; presumptions and alternatives.* Stormwater treatment practices that are designed, and constructed, and maintained in accordance with the criteria and specifications in the design manual will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the design manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The stormwater administrator may require the applicant to provide the documentation, calculations, and examples necessary for the stormwater administrator to determine whether such an affirmative showing is made.
- (C) Whenever LID practices are not achievable, or have not been demonstrated, the measures controlling the final runoff from the site shall control and treat the difference in stormwater runoff volume leaving the project site between pre and post-development conditions for a minimum rate of ten year, 24-hour storm as determined by NOAA.
- (D) Peak stormwater runoff rates shall be controlled for all development at or exceeding 24 percent built upon area or high density projects as defined by this ordinance, for both LID and conventional approaches. The peak stormwater runoff release rates leaving the site during post-construction conditions shall be equal to or less than the pre-development peak stormwater runoff release rates for

the one-year frequency, 24-hour duration storm event as determined by NOAA data for Black Mountain. The emergency overflow and outlet works for any pond or wetland constructed as a stormwater SCM shall be capable of safely passing a discharge with a minimum recurrence frequency of 50 years. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.

- (E) No single SCM shall receive runoff from an area greater than three acres, however the total drainage area from SCMs used in a series may exceed this maximum.
- (F) In addition to the standards for handling stormwater set out in the design manual, development and redevelopment that drains in whole or part to trout waters (class TR) waters shall design and implement the best stormwater practices that do not result in a sustained increase in receiving water temperature, while still meeting the other requirements of this ordinance.
- (G) In addition to the standards for stormwater handling set out in the design manual, development and redevelopment that drains in whole or part to nutrient sensitive waters (class NSW) shall design and implement the best stormwater practices that reduce nutrient loading, while still meeting the other requirements of this ordinance.
- (H) *Separation from seasonal high water table.* For SCMs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

8.2.16 Variances.

- (A) Any person may petition the Town of Black Mountain for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. The Town of Black Mountain may impose reasonable and appropriate conditions and safeguards upon any variance it grants. To qualify for a variance, the petitioner must show all of the following:
 - (1) Unnecessary hardships would result from strict application of this ordinance.
 - (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 - (3) The hardships did not result from actions taken by the petitioner.
 - (4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.
- (B) *Statutory exceptions.* Notwithstanding subsection (A) of this section, exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:
 - (1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.
 - (2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse

effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.

1. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.
2. The stormwater runoff from the entire impervious area of the development is collected, treated and discharged so that it pass through a segment of the vegetative buffer and is managed so that it otherwise complies with all applicable state and federal stormwater management requirements.

8.2.17 Onsite wastewater.

- (A) *Operation and maintenance requirements.* New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance shall be subject to the operation and maintenance requirements of the Buncombe County Environmental Health Department.
- (B) *Standards for operation and maintenance.* Onsite systems for domestic wastewater shall be operated and maintained so as to avoid adverse effects on surface water and groundwater. Operation and maintenance of onsite systems for domestic wastewater shall be in accordance with the standards of the Buncombe County Environmental Health Department.
- (C) *Enforcement.* The Buncombe County Environmental Health Department shall be responsible for the enforcement of the installation, operation and maintenance standards for onsite systems for domestic wastewater within the limits of the town.

SECTION 4: MAINTENANCE

8.2.18 General standards for maintenance of SCMS.

- (A) *Function of SCMs as intended.* The owner of each structural SCM installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural SCM was designed.
- (B) *Annual maintenance inspection and report.* The person responsible for maintenance of any structural SCM installed pursuant to this ordinance shall submit to the stormwater administrator an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect. The inspection report shall contain all of the following:
 - (1) The name and address of the landowner;
 - (2) The recorded book and page number of the lot of each structural SCM;
 - (3) A statement that an inspection was made of all structural SCMs;
 - (4) The date the inspection was made;
 - (5) A statement that all inspected structural SCMs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
 - (6) The original signature and seal of the engineer, surveyor, or landscape architect.

All inspection reports shall be on forms supplied by the stormwater administrator. An original inspection report shall be provided to the stormwater administrator beginning one year from the date of as-built certification and at date established and enforced by the planning department each year following.

8.2.19 Operation and maintenance agreement.

- (A) *In general.* Prior to the conveyance or transfer of any lot or building site to be served by a structural SCM pursuant to this ordinance, and prior to issuance of any permit for development or redevelopment requiring a structural SCM pursuant to this ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural SCM. Until the transference of all property, sites, or lots served by the structural SCM, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural SCM, and shall state the terms, conditions, and schedule of maintenance for the structural SCM. In addition, it shall grant to Town of Black Mountain a right of entry in the event that the stormwater administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural SCM; however, in no case shall the right of entry, of itself, confer an obligation on Town of Black Mountain to assume responsibility for the structural SCM. The operation and maintenance agreement must be approved by the stormwater administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county register of deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the stormwater administrator within 14 days following its recordation.

- (B) *Special requirement for homeowners' and other associations.* For all structural SCMs required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural SCMs. If structural SCMs are not performing adequately or as intended or are not properly maintained, the Town of Black Mountain, in its sole discretion, may remedy the situation, and in such instances the Town of Black Mountain shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural SCMs, provided that the Town of Black Mountain shall first consent to the expenditure.
- (3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to 15 percent of the initial construction cost of the structural SCMs.

Two-thirds of the total amount of sinking fund budget shall be deposited into the escrow account within the first five years and the full amount shall be deposited within ten years following initial construction of the structural SCMs. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

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- (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Black Mountain depending on the design and materials of the stormwater control and management facility.
 - (5) Granting to the Town of Black Mountain a right of entry to inspect, monitor, maintain, repair, and reconstruct structural SCMs.
 - (6) Allowing the Town of Black Mountain to recover from the association and its member's any and all costs the Town of Black Mountain expends to maintain or repair the structural SCMs or to correct any operational deficiencies. Failure to pay the Town of Black Mountain all of its expended costs, after 45 days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Black Mountain shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.
 - (7) A statement that this agreement shall not obligate the Town of Black Mountain to maintain or repair any structural SCMs, and the Town of Black Mountain shall not be liable to any person for the condition or operation of structural SCMs.
 - (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Black Mountain to enforce any of its ordinances as authorized by law.
 - (9) A provision indemnifying and holding harmless the Town of Black Mountain for any costs and injuries arising from or related to the structural SCM, unless the Town of Black Mountain has agreed in writing to assume the maintenance responsibility for the SCM and has accepted dedication of any and all rights necessary to carry out that maintenance.

8.2.20 Inspection program.

Inspections and inspection programs by Town of Black Mountain may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in SCMs; and evaluating the condition of SCMs.

If the owner or occupant of any property refuses to permit such inspection, the stormwater administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the stormwater administrator while carrying out his or her official duties.

8.2.21 Performance security for installation and maintenance.

- (A) *May be required.* The Town of Black Mountain may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural SCMs are:
 - (1) Installed by the permit holder as required by the approved stormwater management plan, and/or
 - (2) Maintained by the owner as required by the operation and maintenance agreement.
- (B) *Amount.*
 - (1) *Installation.* The amount of an installation performance security shall be the total estimated construction cost of the SCMs approved under the permit, plus 25 percent.

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- (2) *Maintenance.* The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the SCMs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.
- (C) *Uses of performance security.*
- (1) *Forfeiture provisions.* The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.
- (2) *Default.* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structure SCM in accordance with the applicable permit or operation and maintenance agreement, the stormwater administrator shall obtain and use all or any portion of the security to make the necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Black Mountain shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.
- (3) *Costs in excess of performance security.* If Town of Black Mountain takes action upon such failure by the applicant or owner, the Town of Black Mountain may collect from the applicant or owner the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.
- (4) *Refund.* Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25 percent) of landscaping installation and ongoing maintenance associated with the SCMs covered by the security unless a separate landscaping and ongoing maintenance security has been provided. Any such landscaping shall be inspected one year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

8.2.22 Notice to owners.

- (A) *Deed recordation and indications on plat.* The applicable operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable), pertaining to every structural SCM shall be referenced on the final plat and shall be recorded with the county register of deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable, shall be recorded with the county register of deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.
- (B) *Signage.* Where appropriate in the determination of the stormwater administrator to assure compliance with this ordinance, structural SCMs shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

8.2.23 Records of installation and maintenance activities.

The owner of each structural SCM shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the stormwater administrator.

8.2.24 Nuisance.

The owner of each stormwater SCM, whether structural or non-structural SCM, shall maintain it so as not to create or result in a nuisance condition.

8.2.25 Maintenance easement.

Every structural SCM installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

SECTION 5: ENFORCEMENT AND VIOLATIONS FOR COMPLIANCE AND PERMITS

8.2.26 General.

- (A) *Authority to enforce.* The provisions of this ordinance shall be enforced by the stormwater administrator, or any authorized agent of Town of Black Mountain. Whenever this section refers to the stormwater administrator, it includes his or her designee as well as any authorized agent of Town of Black Mountain.
- (B) *Violation unlawful.* Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.
- (C) *Each day a separate offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.
- (D) *Responsible persons/entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, SCM, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

For the purposes of this article, responsible person(s) shall include but not be limited to:

- (1) *Person maintaining condition resulting in or constituting violation.* An architect, engineer, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.
- (2) *Responsibility for land or use of land.* The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

8.2.27 Remedies and penalties.

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(A) *Remedies.*

- (1) *Withholding of certificate of occupancy.* The stormwater administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
 - (2) *Disapproval of subsequent permits and development approvals.* As long as a violation of this ordinance continues and remains uncorrected, the stormwater administrator or other authorized agent may withhold, and the planning board may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the subdivision for the land on which the violation occurs.
 - (3) *Injunction, abatements, etc.* The stormwater administrator, with the written authorization of the town manager, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
 - (4) *Correction as public health nuisance, costs as lien, etc.* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits of the Town of Black Mountain G.S. 160A-193, the stormwater administrator, with the written authorization of the town manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
 - (5) *Stop work order.* The stormwater administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.
- (B) *Civil penalties.* Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the stormwater administrator. Civil penalties may be assessed up to the full amount of penalty to which the Town of Black Mountain is subject for violations of its Phase II Stormwater permit, or if no Phase II Stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

8.2.28 Procedures.

- (A) *Initiation/complaint.* Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the stormwater administrator, who shall record the complaint. The complaint shall be investigated promptly by the stormwater administrator.
- (B) *Inspection.* The stormwater administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.
- (C) *Notice of violation and order to correct.* When the stormwater administrator finds that any building, structure, or land is in violation of this ordinance, the stormwater administrator shall notify, in writing, the property owner or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are

to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The stormwater administrator may deliver the notice of violation and correction order personally, by the Code Enforcement staff, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the stormwater administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

- (D) *Extension of time.* A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the stormwater administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the stormwater administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The stormwater administrator may grant 60-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The stormwater administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.
- (E) *Enforcement after time to correct.* After the time has expired to correct a violation, including any extension(s) if authorized by the stormwater administrator, the stormwater administrator shall determine if the violation is corrected. If the violation is not corrected, the stormwater administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.
- (F) *Emergency enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the stormwater administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The stormwater administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

SECTION 6: DEFINITIONS

8.2.29 Terms Defined.

When used in this ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this ordinance specifically indicate otherwise.

Built-upon area (BUA): That portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Department: The North Carolina Department of Environment and Natural Resources.

Design manual: All references herein to the Design Manual are to the latest published edition or revision as published by the North Carolina Department of Environmental Quality.

Development: Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

Division: The Division of Water Quality in the Department.

Larger common plan of development or sale: Any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

Low impact development: The term low impact development (LID) refers to systems and practices that use or mimic natural processes that result in the infiltration, evapotranspiration or use of stormwater in order to protect water quality and associated aquatic habitat. LID is an approach to land development (or re-development) that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product. There are many practices that have been used to adhere to these principles such as bio retention facilities, rain gardens, vegetated rooftops, rain barrels and permeable pavements.

25 year, 24-hour storm: The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 25 years and with a duration of 24 hours as defined by the National Weather Service.

Owner: The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition, such as a management entity.

Post-construction: The point in which construction activity has been concluded prior to issuing a certificate of occupancy or otherwise putting the property into use.

Redevelopment: Any development on previously-developed land, other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater storm water control than the previous development.

Stormwater Control Measure (formally known as Best Management Practice): An alternation of land or physical device engineered and/or designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural SCM includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural SCM" is synonymous with "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this ordinance.

Substantial progress: For the purposes of determining whether substantial progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than 30 days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. "Substantial progress" for purposes of determining whether an approved plan is null and void is not necessarily the same as "substantial expenditures" used for determining vested rights pursuant to applicable law.

TOWN OF BLACK MOUNTAIN TOWN COUNCIL
REQUEST FOR COUNCIL ACTION
Meeting Date: February 14, 2022

SUBJECT: Public Hearing for Rezoning of 713 NC 9 Hwy

#Z-O-22-01

AGENDA INFORMATION

Agenda Location:	PUBLIC HEARING
Item Number:	9A
Department:	Planning and Development
Contact:	Jessica Trotman, Planning Director
Presenter:	Jessica Trotman, Planning Director

BRIEF SUMMARY: Steve Holland has purchased 713 NC 9 Hwy (PIN #: 0619-31-1541.00000). The property is currently TR-4 and the applicant is requesting a zoning designation of HB-8 to allow for commercial use. The Planning Board heard this request at the regular meeting on December 20, 2021 and voted 6-1 (Kathy Phillips voting against) to not recommend the HB-8 zoning designation as there is an unknown impact to the neighbors, a problematic traffic situation, unknowns about the DOT roundabout project and the possibility of unconventional development. The Planning Board believes this area will become more commercial over time but hope that the roundabout will be finished before advancing that change.

MOTION FOR CONSIDERATION:

1. To open the public hearing to rezoned 713 NC 9 Hwy from TR-4 to HB-8.
2. To close the public hearing.
3. To adopt ***Zoning Ordinance #Z-O-22-01*** (statement of consistency included) to rezone 713 NC 9 Hwy from TR-4 to HB-8.

FUNDING SOURCE: N/A

ATTACHMENTS: ***Zoning Ordinance #Z-O-22-01***, Rezoning Application, Rezoning Map, Aerial Map

MANAGER'S COMMENTS AND RECOMMENDATIONS: To adopt ***Zoning Ordinance #Z-O-22-01*** to rezone 713 NC 9 Hwy as presented.

ORDINANCE NO. #Z-O-22-01

**AN ORDINANCE AMENDING THE ZONING MAP FOR PROPERTY LOCATED AT
713 NC 9 HWY**

WHEREAS, the Town of Black Mountain has the authority pursuant to Article 6 of Chapter 160D of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulations and district classifications from time to time in the interest of the public health, safety and welfare; and

WHEREAS, a comprehensive amendment to the Town's zoning regulations was adopted on January 11, 2010, (Ordinance No. #O-10-01) and is codified in Appendix A of the Town of Black Mountain Code of Ordinances (herein "Zoning Ordinance"), and maps dividing and classifying the property within the Town's zoning jurisdiction were adopted on January 11, 2010, Ordinance No. #O-10-01) and are on file and maintained in the Offices of the Town of Black Mountain Planning and Development Department (herein "Official Zoning Map"); and

WHEREAS, this proposed amendment is consistent with the Town of Black Mountain Comprehensive Plan and other official plans of the Town and is determined to be reasonable and in the public interest for the following reasons:

- a. The overall size of the tract of land proposed for the rezoning is reasonable compared to the size of the zoning district in which the subject property is located.
- b. The proposed rezoning is consistent with the comprehensive plan or elements thereof.
- c. The impact to the adjacent property owners and surrounding community is reasonable and the benefits of the zoning shall outweigh any potential inconveniences or harm to the community.
- d. The allowed uses within the proposed zoning district are similar or comparable to the permitted uses as currently zoned.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF BLACK MOUNTAIN
TOWN COUNCIL THAT:**

The Official Zoning Map be, and the same is hereby, amended as follows:

The zoning classification of that certain real property described in Exhibit A and identified on the Buncombe County tax maps as PIN 0619-31-1541.00000, recorded in Deed Book 6127, Page 1281 and currently owned by Steven R Holland 401K Profit Sharing Plan; Acquisition Concepts LLC, from Town Residential (TR-4) to Highway Business (HB-8). A copy of the official zoning map showing said lot is attached hereto as Exhibit "A" and made a part thereof.

This ordinance shall be in full force and effective on the date of adoption.

READ, APPROVED AND ADOPTED, this the 14th day of February, 2022.

Savannah Parrish, Town Clerk

Larry B. Harris Mayor

Approved as to form

Ron Sneed, Town Attorney

Buncombe County



November 22, 2021

1:1,128

0 0.0075 0.015 0.03 mi

REZONING APPLICATION www.townofblackmountain.org

APPLICANT INFORMATION		
Applicant Name <u>Acquisition Concepts, LLC # The Steven R. Holland 401K PSP</u>		
Applicant Address (Number, Street, City, State, ZIP) <u>Steve Holland, 39 Al Faye Farm Way, Weaverville, NC 28787</u>		
Home Phone	Cell Phone <u>828-242-3634</u>	Email Address <u>steve@wncnature.com</u>
MAP AMENDMENT LOCATION AND REQUEST		
I request a rezoning for the following parcel(s):		
Property Address: <u>713 NC Hwy 9</u> PIN #: <u>0619-31-1541</u>		
Current Zoning Classification: <u>TR-4</u> Requested Zoning Classification: <u>HB-8</u>		
Current Land Use: <u>Residential</u> Size of Parcel: <u>0.36 acres</u>		
Reason for Requested Rezoning: _____ _____ _____		
PROPERTY OWNER INFORMATION (If different from applicant)		
Property Owner Name <u>same</u>		
Property Owner Address (Number, Street, City, State, ZIP) _____ _____		
Phone Number	Email Address	
CERTIFICATION		
I hereby certify that all of the information presented by me on this application is accurate to the best of my knowledge, information and belief. I acknowledge that withdrawal of this application after notice has been made will result in forfeiture of any application fees associated with said application. I acknowledge that attendance at the Planning Board meeting is mandatory for the review of this application.		
Petitioner Signature <u>Steve Holland</u>	Date <u>11/19/21</u>	
OFFICE USE ONLY		
Date Received: <u>11/19/2021</u>	Fee: \$600.00 Cash: ☐ Check: ☒ # <u>1375</u> Credit: ☐	
Vote: ____ to ____ For ☐ Against ☐	Planning Board Meeting Date: <u>December 20, 2021</u>	
Vote: ____ to ____ For ☐ Against ☐	Board of Aldermen Meeting Date; _____	

Town of Black Mountain
160 Midland Avenue, Black Mountain, NC 28711
Phone: 828-419-9300 ~ Fax: 828-669-2030

OWNER'S AFFIDAVIT

The person(s) listed below does hereby appear before a Notary Public and swear or affirm that they are the legal owners of the property located at:

713 NC Hwy 9, Black Mountain, NC 28711
PIN #: 0619-31-1541

The person(s) listed below does hereby give authorization and permission to:

Steve Holland Trustee of The Steven R. Holland York, ASP
(Name of Representative/Agent)
(Name or Organization)

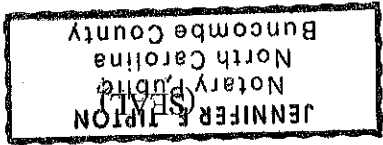
to submit to the Town of Black Mountain the following rezoning request for the above referenced property.

The persons listed below also consent to all conditions and/or stipulations that may be imposed or adopted by the Town of Black Mountain, as part of the petition/application approval.

Owner's Name (Print) Steve Holland
Owner's Signature Steve Holland
Date 11/19/21

STATE OF NORTH CAROLINA
BUNCOMBE COUNTY

On the 19th day of November, 2021, the person(s) listed above personally appeared before me, who executed the foregoing document, and each acknowledged that he/she executed the same and being sworn by me, made oath that the statements in the foregoing document are true.



Notary Public Jennifer E. Tipton
Printed Name

My Commission Expires: December 18, 2021

Town of Black Mountain
160 Midland Avenue, Black Mountain, NC 28711
Phone: 828-419-9300 ~ Fax: 828-669-2030



Town of Black Mountain, NC
Zoning Change Request
0619-31-1541
TR-4 to HB-8

-  HB-8
-  TR-4
-  TND

