



TOWN OF BLACK MOUNTAIN

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

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

MEMORANDUM

To: Town of Black Mountain Planning Board
From: Jennifer Tipton, Senior Admin
Re: Agenda Packet for January 23, 2023
Date: December 30, 2023

The **Town of Black Mountain Planning Board** will meet on **Monday, January 23, 2023, at 6:00 p.m.** in Town Hall at 160 Midland Avenue.

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

1. The proposed agenda;
2. Draft minutes from October 24, 2022; and
3. UDO Section for Review.

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

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

CC: Jessica Trotman, Planning Director
Russell Cate, Planner 1/Zoning Administrator
Ron Sneed, Town Attorney



PUBLIC NOTICE
AVISO PÚBLICO

BLACK MOUNTAIN PLANNING BOARD

REGULAR MEETING
REUNIÓN ORDINARIA

Monday, January 23, 2023, at 6:00 p.m.
Lunes 23 de enero de 2023, a las 6:00 p.m.

The Black Mountain Planning Board will meet for their regular monthly meeting on **Monday, January 23, 2023, at 6:00 p.m.** at Town Hall, 160 Midland Avenue, Black Mountain, N.C.

La Junta de Planificación de Black Mountain se reunirá para su reunión mensual regular el **lunes 23 de enero de 2023 a las 6:00 p.m.** en el Ayuntamiento, 160 Midland Avenue, Black Mountain, N. C.

The meeting is open to the public.
La reunión está abierta al público.

Jennifer Tipton
Senior Admin

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

Posted to the Town Bulletin Board 12/30/2022

www.townofblackmountain.org



**Planning Board Regular Meeting
January 23, 2023**

PROPOSED AGENDA

I. CALL TO ORDER

- Welcome
- Determination of Quorum

II. ADOPTION OF AGENDA

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

III. ADOPTION OF MINUTES

- **Motion:** To adopt the minutes of October 24, 2022, as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- UDO Section Review

VI. PUBLIC COMMENT

VII. COMMUNICATION FROM PLANNING BOARD

VIII. COMMUNICATION FROM STAFF

IX. ADJOURNMENT

TOWN OF BLACK MOUNTAIN PLANNING BOARD

The Black Mountain Planning Board held its regular meeting on Monday, October 24, 2022, at 6:00 p.m. in the Board Room of Town Hall, 160 Midland Avenue, Black Mountain, N.C. 28711.

I. CALL TO ORDER

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

Chris Collins, Chair
Chas Fitzgerald
Kathy Phillips
Rick Earley

Absent:

Pam Norton, Chair
Lauronda Teeple
Joe Laudenslayer

Staff:

Jennifer Tipton, Senior Admin
Jessica Trotman, Planning Director
Russell Cate, Planner I/Zoning Administrator
Ron Sneed, Town Attorney

The meeting was called to order at 6:01 p.m. and duly constituted and opened for business with a quorum of four (4) members.

II. ADOPTION OF AGENDA

Chris Collins made a motion to adopt the agenda as presented. The motion was seconded by Chas Fitzgerald and approved by a vote of 4-0.

III. ADOPTION OF MINUTES

Chas Fitzgerald made a motion to adopt the minutes of September 26, 2022, as written. The motion was seconded by Rick Earley and approved by a vote of 4-0.

IV. NEW BUSINESS

None.

V. OLD BUSINESS

1. Table of Permitted Uses

Jennifer Tipton noted that the table reflects all of the changes from the September meeting and the marked-out uses are for the consultant's use.

Kathy Phillips asked about adding medical marijuana dispensaries to the table. Currently this use is not legal in North Carolina so there is not a lot of authority to define the use or add requirements. Town Attorney Ron Sneed said that it would need to be defined but the law will do that when it becomes legal. It could not be included in the definition of a CBD dispensary because they are two separate things.

There is no change in the number of employees allowed for home occupations. It is a regulatory mechanism for staff to fall back on if there are complaints.

Planning Board Regular Meeting
October 24, 2022

The board asked that there be a retail use for greater than 2500 square feet but don't allow those in the CB district. Square footage is the main way to keep chain stores out of the downtown area. The consultant will draft definitions of the new uses and any uses that are not currently defined.

VI. PUBLIC COMMENT

None.

VII. COMMUNICATION FROM PLANNING BOARD

None.

VIII. COMMUNICATION FROM STAFF

Staff has retooled the UDO process with an eleven-page annotated outline that the consultant will then populate.

VX. ADJOURNMENT

With no further business, the meeting was adjourned at 6:35 p.m.

Prepared by:

Chris Collins, Chair

Jennifer Tipton, Senior Admin



BLACK MOUNTAIN UNIFIED DEVELOPMENT ORDINANCE (UDO)

Contents:

- Chapter 1: Purpose, Authority, and Jurisdiction
- Chapter 2: Zoning Districts and Land Uses
- Chapter 3: Building and Site Design
- Chapter 4: Signs, Outdoor Lighting, and Public Art
- Chapter 5: Subdivision Standards
- Chapter 6: Environmental Management
- Chapter 7: Administration
- Chapter 8: Development Review Procedures
- Chapter 9: Nonconformities
- Chapter 10: Enforcement and Remedies
- Chapter 11: Word Usage
- Appendices

CHAPTER 1: PURPOSE, AUTHORITY, AND JURISDICTION

- A. **Title.** This Ordinance shall be known as and may be cited as the Unified Development Ordinance. It may also be known and may be referred to as the 'UDO'. The map referred to herein is identified by the title 'Official Zoning Map of Black Mountain, North Carolina,' and may be known as the 'Zoning Map'.
- B. **Authority and Jurisdiction.** These regulations are adopted pursuant to the authority granted by Chapter 160D of the North Carolina General Statutes (NCGS). The provisions of this code shall be applicable to all property within the town limits.
- C. **Purpose and Intent.**
 - 1. *Establish Zoning and Development Regulations.* The purpose of this UDO is to provide regulations for the subdivision of land and guidelines for its development, in order to protect and promote the health, safety, and general welfare of the town in accordance with the General Statutes of the State of North Carolina and the Town of Black Mountain Code of Ordinances.
 - 2. *Conformance with Other Plans.* It is also the intent of the Town of Black Mountain Town Council that this land use code implement the planning policies reflected in the town's adopted comprehensive plan and other current, adopted planning documents, and that these regulations be easy to understand and that all processes required be simple and efficient. Other than the comprehensive plan, other documents include but are not limited to the town's capital improvement program, comprehensive pedestrian plan, greenways plan, the French Broad River MPO Comprehensive Transportation Plan, and other local and regional plans adopted or endorsed by the town council.
 - 3. *Reasons for UDO.* This UDO is intended to protect individual property values and development rights while:

- a. Securing safety from flooding, fire, panic, and other dangers;
 - b. Promoting health and the general welfare;
 - c. Providing adequate light and air;
 - d. Preventing the improper use of land;
 - e. Lessening congestion;
 - f. Avoiding undue concentration of population; and
 - g. Facilitating the adequate provision of transportation, public utilities, recreation, and other public requirements.
4. *Character.* The Town Council has given due consideration to the character of each zoning district, its suitability for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the Town. The goal of character comes from a desire for:
- a. Maintaining the small town character and community identity of the town;
 - b. Promoting social, cultural and economic diversity in our community;
 - c. Promoting a vibrant downtown district that encourages small business development and preserves the historical integrity of the existing buildings;
 - d. Providing a network of safe and convenient transportation options that accommodate freight, automobiles, transit vehicles, pedestrians and bicyclists;
 - e. Preserving our natural resources, parks, open spaces, and view-sheds;
 - f. Minimizing risk to property and water quality from flood damage and stormwater;
 - g. Protecting environmental health and safety from natural and manmade disasters;
 - h. Providing a variety of housing types for citizens of all income levels, ages and physical abilities; and
 - i. Creating economic opportunities through organized development patterns that encourage investment and the redevelopment of blighted areas.

§ 1.01 Purpose, Authority, and Jurisdiction

- A. **Title.** This Ordinance shall be known as and may be cited as the Unified Development Ordinance. It may also be known and may be referred to as the 'UDO'. The map referred to herein is identified by the title 'Official Zoning Map of Black Mountain, North Carolina,' and may be known as the 'Zoning Map'.
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greenways plan, the French Broad River MPO Comprehensive Transportation Plan, and other local and regional plans adopted or endorsed by the town council.

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 - g. Protecting environmental health and safety from natural and manmade disasters;
 - h. Providing a variety of housing types for citizens of all income levels, ages and physical abilities; and
 - i. Creating economic opportunities through organized development patterns that encourage investment and the redevelopment of blighted areas.

§ 1.02 Applicability

- A. **Applicability.** The Town is authorized by the North Carolina General Statutes (“NCGS”) to exercise broad powers in the regulation of zoning, planning, subdivision of land, and building. Through this UDO, the Town intends to use all powers provided by virtue of Article 2, Chapter 160D-201, *Planning and Development Regulation Jurisdiction*. The powers granted by NCGS Chapter 160D may be exercised by the Town within its corporate limits.
- B. **Effect on Building and Use.** No building or land shall be used and no building, in whole or in part, shall be erected, moved or altered except in conformity with the regulations for the district in which it is located.
- C. **Required Conformance.** Except as specified otherwise in this UDO, no building or land may be used, and no building may be erected, altered, or moved that is used or designed to be used for any purpose other than a use that is permitted or conditionally permitted in a zoning district in which that building or land is located. To be built upon, a parcel of land shall be platted or meet the requirements of this UDO.
- D. **Repeal of Existing Ordinances.** The adoption of this UDO repeals the existing Land Use Code.

- E. **NCGS 160D.** The standards and regulations of NCGS 160D, as amended, shall govern where this ordinance does not or is more restrictive.

CHAPTER 2: ZONING DISTRICTS AND LAND USES

Contents:

- § 2.01 General Provisions
- § 2.02 Zoning Districts and Standards
- § 2.03 Special Purpose and Overlay Districts
- § 2.04 Land Use Standards (Administrative and Special)
- § 2.05 Measurements and Allowances

§ 2.01 General Provisions

2.01.01 Purpose and Applicability

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

- A. To provide adequate light and air;
- B. To prevent the overcrowding of land;
- C. To avoid undue concentration of population;
- D. To lessen congestion in the streets;
- E. To secure safety from fire, panic, and dangers;
- F. To facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and
- G. To promote the health, safety, morals, or the general welfare of the community.

2.01.02 Official Zoning Map

- A. **Designation of Zoning Map.** The map entitled Town of Black Mountain Zoning Map as adopted by the Town of Black Mountain Town Council and certified by the town clerk establishes the official zoning and overlay districts. This map will be maintained and posted at the Town of Black Mountain Planning and Development Department. Digital and paper copy versions of this map shall also be made available through the planning and development department for reference.
- B. **Same Effect as UDO.** The Official Zoning Map for the Town and all boundaries, notations, references, and other information shown on the map are incorporated by reference and made a part of this UDO and have the same legal force and effect as the UDO.
- C. **Official Zoning Map Adopted.** Zoning districts are shown on the map entitled "Official Zoning Map" of the Town of Black Mountain which is made part of this UDO.
- D. **Interpretation of the Zoning Map.** Where the map appears to be unclear regarding the location of district boundaries, the Planning Director, or at the Planning Director's discretion, the Board of Adjustment shall make a determination using the following criteria:

1. *Rights-of-Way or Easements.* Unless otherwise specified, zoning district boundaries run with property lines or the centerline of streets, alleys, or other rights-of-way. Where the location of these features on the ground differs from that shown on the Official Zoning Map, the features on the ground control.
 2. *Town Limits.* Where district boundaries are indicated as approximately following the Town limits, such Town limits shall be considered the district boundaries.
 3. *Property Lines.* Where the boundaries are indicated as approximately following property or other lot lines, such lines shall be construed to be the boundaries.
 4. *Watercourses.* Boundaries shown as following, or approximately following, the centerline of drainage ways, streams, creeks, water bodies including the reservoirs and lakes, or other watercourses shall be construed as following the channel centerline. In the event of a natural change in the location of such watercourses, the district boundary shall be construed as moving with the channel centerline.
 5. *Railroads.* Boundaries indicated as following railroad lines run along a line midway between the tracks.
 6. *Unsubdivided Land or No Identifiable Feature.* On unsubdivided land, or where a district boundary does not follow an identifiable feature, the location of the boundary, unless the same is indicated by dimensions, shall be determined by applying, in order, the following rules:
 - a. *Legal Description.* The boundary shall be according to the legal description in the ordinance establishing the district boundaries.
 - b. *Text Dimensions.* The boundary shall be located by reference to dimensions shown in the text on the Official Zoning Map, if any.
 - c. *Map Scale.* The boundary shall be located using the map scale appearing on the Official Zoning Map.
 7. *Vacation or Abandonment.* Where a public street, alley, or parcel of land is officially vacated or abandoned, the regulations applicable to the abutting property apply equally to the vacated or abandoned street or alley.
- E. **Split Parcels.** Where a zoning district boundary divides a land parcel under a single ownership into two districts, the requirements of the less restrictive zone shall be applied to the entire parcel and the zoning district boundary adjusted accordingly, provided that the zoning district boundary adjustment is a distance of less than 100 feet, otherwise, an application for rezoning must be filed pursuant to the process set forth in this UDO.
- F. **Changes to Official Zoning Map.** Changes made to zoning district boundaries or other matters portrayed on the official zoning district map shall be made in accordance with the process set forth in this UDO. Changes shall be entered on the official zoning district map promptly after the amendment has been approved by the Town Council.
- G. **Conflicts Resolved.** In the event of a conflict between the district boundaries on the Official Zoning Map and the zoning of property provided by a duly enacted rezoning ordinance adopted before the effective date of this UDO, the Official Zoning Map shall control.

2.01.03 Zoning District Establishment

- A. **Generally.** The Town of Black Mountain is divided into zoning districts according to Table 2.01.03, Zoning Districts, which specifies each district along with the recommended land use category from the Elevate Black Mountain Comprehensive Plan. Pursuant to NCGS 160D, this UDO must be consistent with the map and plan. This section describes the relationship between the zoning districts and the land use map and categories described in the plan.
- B. **Jurisdiction.** For the purpose of this UDO and as established in [1.01](#), the zoning jurisdiction of the Town of Black Mountain shall include the land within the corporate limits of the Town.

- C. **Zoning Districts Established.** For the purpose of this ordinance, the Town of Black Mountain, North Carolina, is hereby divided into the following use districts:
1. *Base Districts.*
 - a. The districts set forth in the table below are those for uses permitted by right (P), those with supplemental standards known as limited uses (L), conditional uses approved as a zoning district by Town Council (C), or those subject to a quasi-judicial evidentiary hearing by special use permit (S). These base districts shall be established by Town Council and amended according to regulations set forth in X, X, and X.
 - b. Within each district is a series of by-right development options that provide for different types and forms of development suitable in various areas of the Town.
 2. *Conditional Districts.* Conditional zoning districts are established to provide flexibility in the development of property while ensuring that proposed development is compatible with neighboring uses. Conditional districts allow for uses or development of land not otherwise permitted in the underlying base district. Conditionally zoned property may be subject to additional conditions, standards and regulations to ensure that the development and use of the property are compatible with the surrounding uses and consistent with the comprehensive plan and other plans adopted by the town. Conditional zoning should not be used to relieve hardships that could be resolved by issuance of a variance.
 3. *Overlay Districts.* The Zoning Districts established may also include Overlay Districts as designated herein and shown on the Official Zoning Map. In such a case, the land is subject to the requirements of the underlying Zoning District and the additional provisions of the Overlay District. Additionally overlay districts are created to further regulate land use, dimensional requirements, and site design in significant or sensitive areas of town.

Table 2.01.03-1, Zoning Districts	
District Type	Future Land Use Category
Base Districts	
Conservation Residential District (CR-1)	Conservation Residential
Suburban Residential District (SR-2)	Valley Residential, Mountain Residential
Town Residential District (TR-4)	Core Neighborhood
Urban Residential District (UR-8)	Core Neighborhood, Complete Neighborhood
Office and Institutional District (OI-6)	Institutional Campus, Commercial
Neighborhood Mixed Use District (UR-8)	Walkable Mixed Use
Central Business District (CB)	Downtown, Downtown Edge
Highway Business District (HB-8)	Commercial, Downtown Edge
Light Industrial District (LI-8)	Industry and Warehousing
Heavy Industrial District (HI-0)	Industry and Warehousing
Institutional Campus District (ICD)	Institutional Campus
Conditional Districts	
Conservation Residential Conditional Zoning District (CR-1 CZ)	

Table 2.01.03-1, Zoning Districts

District Type	Future Land Use Category
Base Districts	
Suburban Residential Conditional Zoning District (SR-2 CZ)	
Town Residential Conditional Zoning District (TR-4 CZ)	
Urban Residential Conditional Zoning District (UR-8 CZ)	
Office and Institutional Conditional Zoning District (OI-6 CZ)	
Neighborhood Mixed Use Conditional Zoning District (NMU-8 CZ)	
Central Business Conditional Zoning District (CB CZ)	
Highway Business Conditional Zoning District (HB-8 CZ)	
Light Industrial Conditional Zoning District (LI-8 CZ)	
Heavy Industrial Conditional Zoning District (HI-0 CZ)	
Specific Conditional Districts	
Cheshire TND-CZ	
Highland Farms IO-6-CZ	
Montreat College IO-6-CZ	
The Settings TR-4-CZ	
Overlay Districts	
Historic Overlays (Historic District and Historic Conservation District)	
Fire District Overlay	
U.S. 70 Corridor Overlay	

2.01.04 Dimensional Standards

- A. **Purpose.** The purpose of these standards is to allow development, redevelopment, and substantial improvement of property consistent with the applicable district standards while protecting the value and enjoyment of adjacent properties. These regulations reduce the impacts of building height and mass on neighboring properties, promote privacy, preserve scenic views, and protect access to sunlight. Requirements are shown in Table 2.01.04-1.
- B. **Graphical Depiction.** Details for the standards below in graphic form in regards to how to interpret these measurements are located in [2.05, Measurements and Allowances](#).
- C. **Specific Allowances.** Allowances for projections into setbacks and increases in height of specific structures are located in [2.05, Measurements and Allowances](#).
- D. **Variances.** Yard and setback requirements shall be met unless variance is granted by the Board of Adjustment.
- E. **Setbacks.**
 1. *Corner and Double Frontage Lots.*
 - a. Yard and setback requirements shall be met unless variance is granted by the Board of Adjustment.
 - b. Minimum setbacks shall be measured horizontally from the origin of the setback as the right-of-way, or property boundary, to the nearest portion of the building or structure.

- c. If the property line extends into a roadway or highway, then the setback line shall be measured from the edge of the roadway or back of the curb when computing setback requirements.
 - d. Wherever right-of-way has not been established, setback shall be measured from the outer edge of the existing drainage ditch running parallel and adjacent to the road, or four feet off the edge of pavement where no ditch exists, or from the edge of the traveled area on an unpaved road.
 - e. Public rights-of-way or easements for streets and roads shall not be considered a part of a lot or open space, or as front, side, or rear yard for the purpose of meeting yard requirements. Driveways, parking areas, loading zones, sidewalks, or greenways may encroach or be included within a yard setback without affecting the setback requirements.
 - f. In developed areas where more than three structures already exist, the setback may be determined by the average setback on already built upon lots located wholly or in part within the same block and zoning district and fronting the same street. In such cases, the setback on such a lot may be less than the required setback but not less than the average of the existing setbacks on the developed lots. However, in no case shall setbacks be less than 15 feet, except in the CB, central business district, where the minimum setback is 12 feet.
 - g. No building or structure shall be placed within a roadway or highway right-of-way, except as otherwise provided in these regulations.
 - h. Any structure on a corner lot shall comply with the minimum setback (front yard) requirements of the street which it faces, and shall comply with 50 percent of the minimum front yard setback requirements, if applicable, on any other street which the corner lot abuts. In case of doubt as to which street a structure faces, or if a structure is built so as not to face any street, the zoning administrator shall determine which setback, side yard and rear yard requirements apply.
 - i. For lots having frontage on two or more streets, but not located on a corner, the minimum front yard shall be provided on each street in accordance with the applicable district(s).
2. *Steep Hillside Lots.*
- a. On residential lots where the first 45 feet from the edge of the pavement exceeds 30 percent slope, front yard setbacks are adjusted as follows:
 - i. In CR-1 and SR-2, minimum front setback requirement is 25 feet.
 - ii. In TR-4 and UR-8, minimum front setback requirement is 15 feet.
3. *Irregularly Shaped Lots.*
- a. Locations of front, side, and rear setback lines on irregularly shaped lots shall be determined by the Director in writing. Such determinations shall be based on the spirit and intent of the district regulations to achieve appropriate spacing and location of building(s) on individual lots. Appeals of such determinations shall be made to the Board of Adjustment.
 - b. In the event the lot is inwardly curved, such as in a cul de sac, the setback line shall be measured at the point on the lot where the lot meets the minimum width for the district.

F. Height.

- 1. *Maximum.* No structure shall be erected or altered so as to exceed the height regulations of the district in which it is located as shown in Table 2.01.04-1.
- 2. *How to Measure.* Height shall be measured as the average vertical distance from the highest adjacent grade at the base of a structure at the corners of the structure, or from the grade of the centerline of the nearest adjacent public roadway, whichever is higher, to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the mean height level between the eaves and ridge of a gable, hip, or gambrel roof.

3. *Buildings on a Slope.* Where buildings are located on slopes, the average height will be calculated for each side of the building at its corners and at no side of the building should the maximum height from the adjacent grade be more than ten feet greater than the allowable building height for the district.
4. *Communication and Radio Towers.*
 - a. Free-standing communications towers constructed pursuant to a special use permit are exempt from building height requirements of this section.
 - b. This section does not apply to amateur radio antennas affected and controlled by FCC regulations codified in Chapter 47, Section 97, of the Code of Federal Regulations
5. *Parapets.* Parapets may be used in all districts and shall not count toward the building height requirements, as long as they do not add more than ten percent of footage to the overall building height above the maximum height for the district. Parapets may be used to meet the screening requirement for rooftop mechanical equipment. For example:

Maximum Building Height	Maximum Parapet (10%)	Maximum Height with Parapet	District
55'	5.5'	60.5'	LI-8
48'	4.8'	52.8'	HI-0
40'	4.0'	44.0'	CB, HB-8
35'	3.5'	38.5'	CR-1, SR-2, TR-4, UR-8, OI-6, UR-8, ICD

G. Number of Structures on a Lot.

1. *Residential.* Each lot in a residentially zoned district shall contain one principal structure unless approved for a secondary dwelling. This does not include approved accessory or temporary structures as approved.
2. *Non-Residential.* There shall be no limit to the number of structures on a non-residential lot provided that all other applicable sections of this UDO and the Building Code can be met.

Table 2.01.04-1, Dimensional Standards

Zoning District	Use	Density and Lot Size			Minimum Yard Requirements			Maximum Height
		Minimum Lot Size, Maximum Density	Minimum Width (Feet)	Minimum Depth (Feet)	Front Setback (Feet)	Side Setback (Feet)	Rear Setback (Feet)	Structure Height (Feet)
CR-1	All Uses	1 acre, 1 DUA	80, 15 at street	100	30, 25 steep hillside	10	30**	35
SR-2	All Uses	1/2 acre, 2 DUA	60, 15 at street	100	30, 25 steep hillside	10	30	35
TR-4	All Uses	1/4 acre, 4 DUA	40, 15 at street	80	20, 15 steep hillside	10	15	35
UR-8	Major Subdivision	1/8 acre, 8 DUA	15	None	20, 15 steep hillside	10	15	35

Table 2.01.04-1, Dimensional Standards

Zoning District	Use	Density and Lot Size			Minimum Yard Requirements			Maximum Height
		Minimum Lot Size, Maximum Density	Minimum Width (Feet)	Minimum Depth (Feet)	Front Setback (Feet)	Side Setback (Feet)	Rear Setback (Feet)	Structure Height (Feet)
	Other Residential	5,000 sq ft, No Max Density	15	None	20, 15 steep hillside	10	15	3540
	Non-Residential	1/8 acre, No Max Density	40, 15 at street	None	20, 15 steep hillside	10	15	3550
OI-6	Residential	1/6 acre, 6 DUA	60	100	30	10	20	3540
	Non-Residential	1/6 acre, No Max Density	100	100	40	30	30, 40 abutting residential district	3550
NMU-8	Residential	1/8 acre, 8 DUA	50	100	25	10	10	3540
	Non-Residential	1/6 acre, No Max Density	75	100	25	20	10, 20 abutting residential district	3550
CBD	All Uses	None	None	None	12 from curb	None, comply with fire and building code	None, comply with fire and building code	4050
HB-8	Residential	1/8 acre, 8 DUA	50	None	15	10	30	40
	Non-Residential	None	50	None	15	10, 20 abutting residential district	20, 30 abutting residential district	4050
LI-8	Residential	1/8 acre, 8 DUA	50	None	15	10	30	55

Table 2.01.04-1, Dimensional Standards								
Zoning District	Use	Density and Lot Size			Minimum Yard Requirements			Maximum Height
		Minimum Lot Size, Maximum Density	Minimum Width (Feet)	Minimum Depth (Feet)	Front Setback (Feet)	Side Setback (Feet)	Rear Setback (Feet)	Structure Height (Feet)
	Non-Residential	None	None	None	0 on private street, 30 on public street, 50 across from residential street	10, 20 abutting residential district	20, 30 abutting residential district	55
HI-0	All Uses	None	None	None	15	10, 20 abutting residential district	20, 30 abutting residential district	48

§ 2.02 Zoning Districts and Standards

2.02.01 Districts

The Town of Black Mountain is divided into zoning districts according to Table 2.02.01-1, *Zoning Districts*, below, which specifies each district along with the recommended land use category from the Future Land Use Map of the Comprehensive Plan. Pursuant to NCGS 160D, this UDO must be consistent with the map and plan. This section describes the relationship between the zoning districts and the land use map and categories described in the plan.

Table 2.02.01-1, Zoning Districts

District	Future Land Use Category	Purpose and Intent
Base Districts		
Conservation Residential District (CR-1)	Conservation Residential	The conservation residential district is established to protect areas in which the principal use of the land is residential or agricultural and where steep slopes or other environmental features make it more suitable for large lot development, conservation development and the preservation of open space.
Suburban Residential District (SR-2)	Valley Residential, Mountain Residential	The suburban residential district is established to protect areas in which the principal use of the land is single-family residential and where less dense development is preferred for the protection of slopes or environmentally sensitive areas, traditional single-family neighborhoods and the preservation of open space.
Town Residential District (TR-4)	Core Neighborhood	The town residential district is established to allow for a variety of housing types while maintaining an overall residential character with medium density. Any use which, because of its characteristics would interfere with the residential nature of the area is excluded.
Urban Residential District (UR-8)	Core Neighborhood, Complete Neighborhood	The mixed residential district is established to provide a variety of housing types, promote density in the more urbanized and developable areas or town, and structure the orderly development of residential neighborhoods.
Office and Institutional District (OI-6)	Institutional Campus, Commercial	The office and institutional district is established to provide transition between residential and commercial districts; to accommodate a mixture of residential, office, and institutional uses in conditions of good health and safety; to accommodate planned developments that are institutional in nature and which may have multiple buildings and uses within one property; and to protect property values of residential, institutional and professional uses within the district in a way that is mutually beneficial.
Neighborhood Mixed Use District (UR-8)	Walkable Mixed Use	The neighborhood mixed use district is established to serve the needs of the surrounding residential neighborhoods by providing compatible goods and services without negatively impacting the residential nature of the adjacent neighborhoods. It is also intended to establish areas for low-intensity business centers which are accessible to pedestrians from the surrounding residential neighborhoods. Supplementary District Requirements: New construction within this district shall retain the characteristics of a residential neighborhood and shall not include metal buildings or cinder block buildings as the primary structure on a lot. Newly constructed structures, unless part of a special use permit or an accessory structure, shall have a pitched roof and other characteristics of single-family homes within the adjacent residential neighborhoods.

Table 2.02.01-1, Zoning Districts

District	Future Land Use Category	Purpose and Intent
Base Districts		
Central Business District (CB)	Downtown, Downtown Edge	The central business district includes the area traditionally known as "downtown" and includes the "downtown historic district". This district is established to maintain the village-like community that preserves architectural heritage and small-town character of Black Mountain. It is intended to promote a safe, convenient, and attractive environment for pedestrians; promotes business in buildings of a size and scale appropriate to a small town; encourage locally-owned businesses, entrepreneurs, and artists; provide a wide range of shopping, dining, working, and cultural attractions with storefronts that interact with the sidewalk; promote the beautification of the public rights-of-way; and encourage residential development that blends with the commercial character of the district and enhances the variety of housing options provided in the town. Supplementary District Requirements: A. Primary entrances to buildings must connect to sidewalks. B. Existing sidewalks may be used for outdoor seating. Sidewalks may also be used for displays or temporary signs as permitted by Chapter 4 as long as four feet (4' or 48"), as measured from the back of the curb toward the building, is maintained as free and clear passage for pedestrians and wheelchairs. C. As part of new construction, sidewalks are required adjacent to state and town roadways and must be a minimum of six feet wide. Sidewalks intended for shared use with outdoor seating or retail displays must be a minimum of 12 feet wide.
Highway Business District (HB-8)	Commercial, Downtown Edge	The highway business district provides orderly growth along the town's major thoroughfares; promotes access management and traffic safety for all modes of transportation, encourages the redevelopment of existing commercial sites; creates economic opportunities ; promotes a safe, convenient and attractive environment for pedestrians to access good and services; creates gateways and entrances into the town along central corridors; and encourages residential development that blends with the commercial character of the district and enhances the variety of housing options provided in the town. Because of the objectives and characteristics of this district, it is located contiguous to major streets or within proximity to primary commercial districts. Supplementary District Requirements: A. Primary entrances to buildings must connect to sidewalks. B. As part of new construction, sidewalks are required adjacent to state and town roadways and must be a minimum of five feet wide with a minimum two-foot planted strip between the sidewalk and the roadway. C. For areas along U.S. 70, additional development requirements may apply. See Section 2.03.

Table 2.02.01-1, Zoning Districts

District	Future Land Use Category	Purpose and Intent
Base Districts		
Light Industrial District (LI-8)	Industry and Warehousing	The light industrial district includes areas in which the principal use of the land is for light manufacturing, materials processing, warehousing, and retail operations incidental thereto. The district promotes moderate-sized, clean industries which provide jobs and career opportunities within the community; permits uses that are conducted so that noise, odor, dust and glare of each operation is completely confined within an enclosed building, insofar as is practical; encourages entrepreneurship and small business development; allows limited residential uses which do not conflict with the ability of industrial enterprises to conduct their businesses within the district area; and allows community facilities and convenience trade establishments which provide needed services to industrial development. Supplementary District Requirements: A. Documentation of permits required. Applications for a zoning permit for industrial, fabrication or manufacturing uses must include documentation of applicable state and federal permits, including documentation of regulatory compliance for handling and storage of hazardous materials, use of ammonia or other chemicals for heating, cooling or other mechanical operations as appropriate, and the type and maximum amount of any hazardous materials that will be stored on site at any given time. B. Applications for zoning permits must include copies of NCDOT driveway permit applications for concurrence review. Traffic management and access shall be designed to maximize safety and to channel truck traffic onto major state roads with as little secondary or town road exposure as possible. A traffic impact analysis may be required in accordance with the town driveway permit requirements when accessing town roads. C. Operations on site, including free-standing mechanical equipment, chimneys, storage containers or tanks, water towers or chillers cannot cause excessive noise, vibration, smoke, odors, electrical or radio interference.

Table 2.02.01-1, Zoning Districts

District	Future Land Use Category	Purpose and Intent
Base Districts		
Heavy Industrial District (HI-0)	Industry and Warehousing	The heavy industrial district is intended to provide areas in which the principal use of the land is for general manufacturing, materials processing, warehousing or outdoor storage of materials, and retail operations incidental thereto; to promote clean industries which provide jobs and career opportunities within the community; permit uses that are conducted so that noise, odor, dust and glare of each operation impacts only other industrial uses; encourage entrepreneurship and business development; and to restrict residential uses which conflict with the ability of industrial enterprises to conduct their businesses within the district area; and to allow community facilities and convenience trade and fleet establishments which provide needed services to industrial development. Supplemental District Requirements: A. Documentation of permits required. Industrial, fabrication or manufacturing uses must provide documentation of applicable state and federal permits to the town, including documentation of regulatory compliance for handling and storage of hazardous materials, use of ammonia or other chemicals for heating, cooling or other mechanical operations as appropriate, and the type and maximum amount of any hazardous materials that will be stored on site at any given time. B. Applications for zoning permits must include copies of NCDOT driveway permit applications for concurrence review. Traffic management and access shall be designed to maximize safety and to channel truck traffic onto major state roads with as little secondary or town road exposure as possible. A traffic impact analysis may be required in accordance with the town driveway permit requirements when accessing town roads.
Institutional Campus District (ICD)	Institutional Campus	This district is intended to allow for the continued and future use, expansion, and new development of academic, religious, government, and similar type uses where such campus or facilities qualify for location. The purpose of this district is to maintain the overall design integrity of the campus or facility setting while minimizing any adverse impacts on the neighboring areas. For Supplemental District Regulations, please see 2.02.04

Descriptions below incorporated into Table above.

Ref -- SECTION 4.7 ZONING REGULATIONS BY DISTRICT

See Section 4.7.15 for the permitted use table.

See Section 4.7.16 for the district dimensions standards table.

4.7.1 Conservation residential district (CR-1).

4.7.1.1 Purpose and intent. The conservation residential district is established to protect areas in which the principal use of the land is residential or agricultural and where steep slopes or other environmental features make it more suitable for large lot development, conservation development and the preservation of open space.

4.7.2 Suburban residential district (SR-2).

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

4.7.3 Town residential district (TR-4).

4.7.3.1 Purpose and intent. The town residential district is established to allow for a variety of housing types while maintaining an overall residential character with medium density. Any use which, because of its characteristics would interfere with the residential nature of the area is excluded.

4.7.4 Urban residential district (UR-8).

4.7.4.1 Purpose and intent. The mixed residential district is established to provide a variety of housing types, promote density in the more urbanized and developable areas or town, and structure the orderly development of residential neighborhoods.

4.7.5 Office and institutional district (OI-6).

4.7.5.1 Purpose and intent. The office and institutional district is established to provide transition between residential and commercial districts; to accommodate a mixture of residential, office, and institutional uses in conditions of good health and safety; to accommodate planned developments that are institutional in nature and which may have multiple buildings and uses within one property; and to protect property values of residential, institutional and professional uses within the district in a way that is mutually beneficial.

4.7.6 Neighborhood mixed use district (NMU-8).

4.7.6.1 Purpose and intent. The neighborhood mixed use district is established to serve the needs of the surrounding residential neighborhoods by providing compatible goods and services without negatively impacting the residential nature of the adjacent neighborhoods. It is also intended to establish areas for low-intensity business centers which are accessible to pedestrians from the surrounding residential neighborhoods.

4.7.6.2 Supplementary district requirements (NMU-8). New construction within this district shall retain the characteristics of a residential neighborhood and shall not include metal buildings or cinder block buildings as the primary structure on a lot. Newly constructed structures, unless part of a special use permit or an accessory structure, shall have a pitched roof and other characteristics of single-family homes within the adjacent residential neighborhoods.

4.7.7 Central business district (CB).

4.7.7.1 Purpose and intent. The central business district includes the area traditionally known as "downtown" and includes the "downtown historic district". This district is established to maintain the village-like community that preserves architectural heritage and small-town character of Black Mountain. It is intended to promote a safe, convenient, and attractive environment for pedestrians; promotes business in buildings of a size and scale appropriate to a small town; encourage locally-owned businesses, entrepreneurs, and artists; provide a wide range of shopping, dining, working, and cultural attractions with storefronts that interact with the sidewalk; promote the beautification of the public rights-of-way; and encourage residential development that blends with the commercial character of the district and enhances the variety of housing options provided in the town.

4.7.7.2 Supplementary district requirements (CB).

- A. Primary entrances to buildings must connect to sidewalks.
- B. Existing sidewalks may be used for outdoor seating. Sidewalks may also be used for displays or temporary signs as permitted by Chapter 9 of this LUC as long as four feet (4' or 48"), as measured from the back of the curb toward the building, is maintained as free and clear passage for pedestrians and wheelchairs.
- C. As part of new construction, sidewalks are required adjacent to state and town roadways and must be a minimum of six feet wide. Sidewalks intended for shared use with outdoor seating or retail displays must be a minimum of 12 feet wide.

4.7.8 Highway business district (HB-8).

4.7.8.1 Purpose and intent. The highway business district provides orderly growth along the town's major thoroughfares; promotes access management and traffic safety for all modes of transportation, encourages the redevelopment of existing commercial sites; creates economic opportunities ; promotes a safe, convenient and attractive environment for pedestrians to access good and services; creates gateways and entrances into the town along central corridors; and encourages residential development that blends with the commercial character of the district and enhances the variety of housing options provided in the town. Because of the objectives and characteristics of this district, it is located contiguous to major streets or within proximity to primary commercial districts.

4.7.8.2 Supplementary district requirements (HB-8).

- A. Primary entrances to buildings must connect to sidewalks.
- B. As part of new construction, sidewalks are required adjacent to state and town roadways and must be a minimum of five feet wide with a minimum two-foot planted strip between the sidewalk and the roadway.
- C. For areas along U.S. 70, additional development requirements may apply. See Section 4.7.7.

4.7.9 Light industrial district (LI-8).

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

4.7.9.3[2] Supplementary district requirements (LI-8).

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

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

C. Operations on site, including free-standing mechanical equipment, chimneys, storage containers or tanks, water towers or chillers cannot cause excessive noise, vibration, smoke, odors, electrical or radio interference.

4.7.10 Heavy industrial district (HI-0).

4.7.10.1 Purpose and Intent. The heavy industrial district is intended to provide areas in which the principal use of the land is for general manufacturing, materials processing, warehousing or outdoor storage of materials, and retail operations incidental thereto; to promote clean industries which provide jobs and career opportunities within the community; permit uses that are conducted so that noise, odor, dust and glare of each operation impacts only other industrial uses; encourage entrepreneurship and business development; and to restrict residential uses which conflict with the ability of industrial enterprises to conduct their businesses within the district area; and to allow community facilities and convenience trade and fleet establishments which provide needed services to industrial development.

4.7.10.2 Supplementary district requirements (HI-0).

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

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

4.7.11 TND traditional neighborhood development (master planned).

~~4.7.11.1 Purpose and Intent.~~ The purpose of this district is to allow for the development of fully integrated, mixed-use pedestrian oriented neighborhoods. The intent is to minimize traffic congestion, suburban sprawl, infrastructure costs, and environmental degradation. The provisions of this district are based on urban design and development conventions which were widely used in the United States from colonial times until the 1940's and ~~were based on the following principles:~~

- ~~A. All neighborhoods have identifiable centers and edges.~~
- ~~B. The center of the neighborhood is easily accessed by non-vehicular means from lots on the edges (i.e. approximately one-quarter mile from center to edge, or a five-minute walk).~~
- ~~C. Uses and housing types are mixed and in close proximity to one another.~~
- ~~D. Street networks are interconnected and blocks are small.~~
- ~~E. Civic buildings are given prominent sites throughout the neighborhood.~~

~~4.7.11.2 Master plan required.~~

~~A. A master plan in compliance with TND design standards and the general provisions of the subdivision regulations shall be provided with any application to reclassify a property to TND zoning. A rezoning request for TND zoning is contingent upon the approval of a master plan; if a master plan is not approved for the property, then it reverts to its previous zoning classification(s). No use or development of any property located in a TND district shall be permitted until a master plan, showing the proposed uses and development of the property, has been approved by the town council, upon a recommendation made by the planning board. Once the master plan has been approved, the developer must follow the processes and regulations set forth in the Town of Black Mountain's Subdivision Regulations to proceed with development of the property.~~

~~B. All submissions for approval shall include an agreement and approval by the associated TND master association governing the overall development. Specifically each new phase will have appropriate design standards and restrictions agreed upon and submitted to the appropriate county authority in the form of a supplemental master declaration. These additional design standards and restrictions shall be approved and filed prior to the commencement of any construction associated with that phase. The final plat submission and approval shall follow the same guidelines as the above preliminary plan.~~

~~C. The master plan shall be certified by a registered architect, registered landscape architect or certified planner.~~

~~D. If a developer proposes to construct the subdivision in phases, then the master plan shall be prepared for the entire property, and shall show the proposed phases of development. Each phase of development shall be preceded by the submission and approval of a preliminary plat for that phase, followed by the submission and approval of a final plat. In addition the master plan shall include:~~

- ~~1. An outline of any additional regulatory intentions or design guidelines,~~
- ~~2. Show intended phasing of development, and~~
- ~~3. Include any other information, e.g., conceptual building prototypes, which may be required to evaluate the interior pedestrian environment and conditions at project edges.~~

~~E. Approval process:~~

- ~~1. The owner or developer shall submit ten copies of the master plan to the zoning administrator for consideration by the planning board at least ten working days prior to the next scheduled meeting of the planning board.~~
- ~~2. The zoning administrator shall submit to the planning board at its next meeting any master plan that is in compliance with the design standards specified herein.~~

~~3. A filing fee shall be paid. Any master plan re-submitted within one year for substantially the same property shall not pay an additional filing fee. (0-99-09, adopted 6-14-99)~~

~~4. The planning board shall review a master plan submission or re-submission for no more than 180 days from the first meeting it is presented, in order to make a recommendation to the town council. Failure to make a recommendation accordingly shall cause the master plan to be forwarded to the town council without a recommendation. The applicant may withdraw a master plan by a written request to the zoning administrator. A withdrawn master plan may be re-submitted to the planning board for further reconsideration at a later time.~~

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

~~(a) Staff shall prominently post a notice of the public hearing on the site of the proposed master plan and rezoning or on an adjacent public street or highway right-of-way. Staff shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed master plan and rezoning and the date of the public hearing. Notice shall also be posted to the town website indicating the date and time of the hearing.~~

~~6. Master plans not approved by the town council and subsequently revised shall be re-submitted through the approval process.~~

~~7. Approved master plans shall not be revised without re-submission through the approval process. However, minor amendments at the site plan level for specific land uses or developments may be approved by the zoning administrator, provided:~~

- ~~• Building floor areas are not changed by more than 20 percent;~~
- ~~• Building or structure heights are not increased by more than 20 percent;~~
- ~~• Parking areas or spaces are not diminished by more than 20 percent;~~
- ~~• Relocated buildings or uses maintain the same general building relationships, landscaping and utility standards;~~
- ~~and~~
- ~~• The amendment preserves compliance with any specific requirements of the TND district and the town's general guidelines;~~
- ~~• Appropriate HOA (master association) has reviewed and approved all revisions and submittals for a new phase commencement. This approval shall be in the form of a supplemental master declaration which is agreed to and approved by the master association.~~

~~8. Once a master plan has been approved, the project may proceed through the major subdivision and permitting processes outlined in the subdivision regulations of chapter 3, with the master plan being considered as a preliminary plat.~~

4.7.11.3 Development Parameters.

~~A. No minimum development size; however 40 acres is the recommended minimum size.~~

~~B. No maximum development size; however 200 acres is the recommended maximum size.~~

~~C. Maximum permitted densities and total number of dwelling units shall be established during the master plan review process.~~

~~D. Buffer requirements shall be established during the master plan review process. Property located on the perimeter of the TND district shall have setbacks and buffers that are consistent with the setbacks and buffers of the adjoining zoning district, including provisions for accessory buildings, but shall be a minimum of 15 feet.~~

~~4.7.11.4 Uses.~~

~~A. Permitted uses shall be based on the general category of use that has been established for a lot or group of lots in the master plan. The general land use categories are listed below with particular uses allowed and suggested amounts for each, expressed as a percentage of the total gross area of the neighborhood:~~

Use	Amount	Allowable Uses
Public	At least 5%	Parks, squares, greenbelts, sidewalks/walkways, streets, alleys and civic uses
Civic	At least 2%	Community buildings including meeting halls, libraries, post offices, schools, child care centers, clubhouses, religious buildings, recreational facilities, museums, performing arts buildings, and municipal buildings
Shop front	2% to 20%	Residential and commercial uses; approximately 50% of the building area shall be designated for residential use.*
Attached Homes (Multi-Family)	15% to 30%	Buildings for residential use and limited commercial use, such as a coffee house, home occupation or bed and breakfast inn
Detached Homes	30%	Buildings for residential uses, customary home occupational uses and bed and breakfast inns
Business	5% to 15%	Office, bar/brewery, restaurant, brew pub/tavern, retail, including eating establishments, and other commercial uses provided they produce little or no noise, odor, dust or vibration**

~~* Residential uses are not permitted on the ground floors of shop front buildings.~~

~~** Business uses shall be grouped together as follows: office and retail may be grouped with shop front buildings to form town centers. All other business uses shall be grouped together outside town and neighborhood center.~~

~~B. Special uses:~~

~~1. Cemeteries, mausoleums or columbaria.~~

~~2. Churches.~~

~~3. Electric power and public utility stations or substations and public utility transmission lines.~~

~~4. Fairgrounds.~~

~~5. Drive-thru restaurants.~~

~~6. Automotive services.~~

~~7. Community living facilities.~~

~~8. Laboratories.~~

~~9. Outdoor theaters.~~

~~10. Public or non-residential swimming pools.~~

~~11. Schools—Public or private.~~

~~12. Stalls or merchandise stands for outdoor sale of goods at street front.~~

~~13. Veterinarian offices.~~

~~C. Prohibited uses:~~

~~1. Any commercial use which encourages patrons to remain in their automobiles while receiving goods or services, except service stations.~~

~~2. Carting, moving, or hauling terminal or yard.~~

~~3. Chemical manufacturing, storage or distribution as a primary use.~~

~~4. Enameling, painting or plating, except artist's studios.~~

~~5. Kennels.~~

~~6. Landfills.~~

~~7. Manufacturing, storage or disposal of hazardous waste materials.~~

~~8. Mobile homes.~~

~~9. Outdoor advertising or billboard as a principle use.~~

~~10. Parking lot as principal use.~~

~~11. Prisons, detention centers, or half-way houses.~~

~~12. Sand, gravel, or other mineral extraction.~~

~~13. Scrap yards.~~

~~14. Any use which produces the following adverse impacts; noise at a level greater than typical street or traffic noise, offensive vibration, emission of noxious solids, liquids, or gases.~~

~~*Large scale, single use facilities (e.g., conference centers, theaters, athletic facilities) shall generally occur above or behind smaller scale street front space.~~

~~4.7.11.5 Design standards.~~

~~A. Neighborhood form.~~

~~1. Dwellings at the edge of the neighborhood shall be roughly a five minute walk to the center of the neighborhood.~~

~~2. A great variety of housing types and price ranges shall exist in the neighborhood, with the highest density of housing located towards the center of the neighborhood.~~

~~3. Within a neighborhood the following land uses shall be arranged to serve the needs of the residents in a convenient walking environment: open space/recreational areas, civic buildings, low and high density residential, retail/commercial, business/workplace, and parking.~~

~~4. The area of the TND shall be divided into blocks, streets, lots and open space.~~

~~5. Similar land uses shall generally enfront across each street. Dissimilar land uses shall generally abut at rear lot lines. Corner lots which front on streets of dissimilar use shall generally observe the setback established on each fronting street.~~

~~6. Along existing streets, new buildings shall be compatible with the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.~~

~~7. The appearance of the neighborhood should blend in with existing neighborhoods and feature the use of natural materials in construction.~~

~~*B. Lots and buildings:*~~

~~1. All lots shall share a frontage line with a street or public space; lots fronting on a public space shall have access to a rear alley.~~

~~2. Consistent build-to lines shall be established along all streets and public space frontages.~~

~~3. All buildings, except accessory structures, shall have their main entrance opening on a street or public space.~~

~~4. No structure shall exceed 35 feet in height.~~

~~*C. Inclusion of affordable housing:*~~

~~1. Ten percent of all units created, whether for rental or purchase, must meet the affordable housing thresholds established by Buncombe County Community Development. Affordable units must blend into the overall development and not be aesthetically distinguishable from the other units, but may be of a higher density or smaller scale than other units within the development. For example, by making one of the buildings into a duplex, or by building a smaller sized unit of similar style, a developer can decrease their per unit cost and maintain the architectural integrity of their design.~~

~~2. Instead of constructing affordable units, developers may opt to convey an undeveloped lot or lots within the development for construction by a town approved affordable housing agency to meet the ten-percent requirement as long as the lot(s) conveyed can accommodate an equal or greater number of units to ten percent of the overall development.~~

~~3. A developer may also pay a fee-in-lieu of development or conveyance of a lot of equal value to ten percent of the overall estimated construction cost of the built-out master plan to the Town of Black Mountain for the purpose of creating new and affordable housing opportunities.~~

~~*D. Streets, alleys and pathways:*~~

~~1. Public streets shall provide access to all lots. Designs shall permit comfortable use of the street by motorists, pedestrians and bicyclists. Pavement widths, design speeds, and number of motor travel lanes should be minimized to enhance safety for motorists and non-motorists alike. The specific design of any given street must consider the building types which front on the street and the relationship of the street to the overall town street network. All roads shall be in compliance with the requirements as indicated in the Town of Black Mountain Standards and Detail Manual.~~

~~2. Streets and alleys shall, wherever practical, terminate at other streets within the neighborhood and connect to existing and projected streets outside the development. Cul-de-sac and dead-end streets are discouraged and should only occur where absolutely necessary due to natural conditions.~~

~~3. No block face should have a length greater than 500 feet without dedicated alley or pathway providing through access.~~

4. To prevent the build-up of vehicular speed, disperse traffic flow, and create a sense of visual enclosure, long uninterrupted segments of straight streets should be avoided.

5. A continuous network of rear alleys is recommended for all lots in a TND.

6. Utilities shall be underground and shall run along alleys wherever possible.

7. Streets shall be organized according to a hierarchy based on function, size, capacity and design speed. Streets and rights-of-ways are therefore expected to differ in dimension. The proposed hierarchy of streets shall be indicated on the submitted master plan and each street type shall be separately detailed in the master plan.

8. Every street, except alleys, shall have a sidewalk on at least one side that is at least five feet wide. In shop-front areas, sidewalks shall be at least ten feet wide.

E. Parking:

1. On-street parking should be provided on all streets. Occasional on-street parking can be accommodated without additional pavement width. For streets which serve workplace and storefront buildings, on-street parking is required and should be marked as such. On-street parking should be parallel to street unless the street lends itself to other parking layouts.

2. Parking lots shall generally be located at the rear or at the side of buildings and shall be screened from public rights-of-way and adjoining properties by land forms or evergreen vegetation so as to provide a barrier that will be at least three feet high and provide a 75 percent visual barrier within two years.

3. To the extent practicable, adjacent parking lots shall be interconnected.

4. Small and strategically placed parking areas are recommended.

5. Parking areas shall be paved as required in chapter 10 and all parking areas and traffic lanes shall be clearly marked.

6. The number, width and location of curb cuts shall be such as to minimize traffic hazards, inconvenience and congestion.

7. Off-street parking and loading requirements as outlined in the town's parking regulations may be used as guidance.

8. The developer shall demonstrate the provision of adequate parking and off-street loading areas for different areas of the development, based on the uses allowed and the density of development.

9. In addition to landscaping provided for screening above, trees should be planted around the perimeter and interior of parking lots to provide shade.

F. Landscaping:

1. Trees shall be planted within right-of-ways parallel to the street along all streets except alleys.

2. Tree spacing shall be determined by species type. Large maturing trees shall be planted a minimum of 40 feet and a maximum of 50 feet on center. Small and medium maturing trees shall be planted a minimum of ten feet and a maximum of 30 feet on center.

3. Large maturing trees shall generally be planted along residential streets and along the street frontages and perimeter areas of parks, squares, greenbelts and civic structures.

4. Small maturing trees shall generally be planted along non-residential streets, interior portions of parks, squares, greenbelts and civic lots. Storefronts shall not be obstructed by the planting pattern.

~~5. The natural features of the landscape shall be incorporated into the landscaping plan.~~

~~6. All plantings shall be with native or appropriate species (refer to list in appendix).~~

~~6. Requirements concerning sidewalks and greenways:~~

~~1. Sidewalks or greenway easements shall be provided in locations shown on the adopted comprehensive pedestrian master plan or shall connect to pedestrian facilities shown on the comprehensive pedestrian master plan. A fee in lieu of construction or dedication of easement may be provided to the town at an equivalent cost to construction upon approval of the town planning board.~~

~~2. Existing sidewalks at the time of development or re-development must be improved, repaired, or replaced as necessary in order to be compliant with town and ADA regulations as part of new projects.~~

2.02.02 Conditional Districts

- A. **Purpose.** Conditional zoning districts are established to provide flexibility in the development of property while ensuring that proposed development is compatible with neighboring uses. Conditional districts allow for uses or development of land not otherwise permitted in the underlying base district. Conditionally zoned property may be subject to additional conditions, standards and regulations to ensure that the development and use of the property are compatible with the surrounding uses and consistent with the comprehensive plan and other plans adopted by the town. Conditional zoning should not be used to relieve hardships that could be resolved by issuance of a variance.
- B. **Applicability.** All zoning requirements that apply to the general use district are also applicable to the corresponding conditional use district unless adopted conditions are more restrictive.
- C. **Specific Requirements.** The following shall also apply:
1. *Phased Development.* A conditional district shall consist of land that will be planned and developed as a single development or as an approved series of development phases. The owner or owners of the property shall be legally capable of ensuring that development of the property will comply with all documents, plans, standards, and conditions approved by the town.
 2. *Uses Permitted.* Only those uses permitted in the underlying zoning district, whether by right or specially, shall be permitted in the conditional zoning district. Uses not otherwise permitted within the underlying zoning district shall not be permitted within the conditional district.
 3. *Variances and Special Use Permits.* No variance or special use permit may be issued for developments on property subject to a conditional zoning ordinance.
- D. **Conditions.**
1. *Site-Specific Standards.* Site-specific standards and conditions may be imposed within a conditional district, provided such standards or conditions are approved by the Town Council and consented to by the petitioner in writing.
 2. *Persons Imposing Standards.* Standards and conditions may be proposed by the petitioner, by Town staff, by recommendation of the Planning Board, or by the Town Council.
 3. *Limits on Conditions.* Standards and conditions imposed shall be limited to those that address the conformance of the development and use of the site to Town ordinances and plans, or the impacts reasonably expected to be generated by the development or use of the site.
- E. **Consent.** With the applicant's written consent, the Town Council may agree to conditional zoning conditions that address additional fees, design requirements, and other development considerations.

- F. **Timing and Submittal of Application.** All applications for conditional district rezoning shall be submitted to the Planning Department by the owner or any other person having a recognized interest in the land for which the development is proposed or their authorized agent.
- G. **Content of Application.** Every application for conditional zoning shall include the following:
1. *Site Plan.* A proposed site plan, which shall include:
 - a. The name and address of the owner;
 - b. Total acreage of the subject parcel;
 - c. The proposed site layout, including street and lot arrangement; the general location, orientation and size of principal structures; designation of driveways, parking lots, open space, greenways, and stormwater management areas; the location, size and treatment of environmentally sensitive areas; and any existing or proposed easements, utility lines, water lines, or sewer lines.
 - d. Proposed total density and a summary of the total land area devoted to each type of general use of land;
 - e. A full list of the proposed uses consistent in character with the underlying zoning district, whether permitted by right or conditionally;
 - f. A proposed development schedule if the development is to proceed in phases; and
 - g. Identification of any required variation from existing regulations of the underlying base zoning district.
 2. *List of Proposed Conditions.* A list of proposed conditions shall accompany the application.
 3. *Application Fee.* Application fees shall be established by the Town Council and the required fee must accompany the application. Application fees are nonrefundable except where the application is withdrawn prior to consideration by the Planning Board.
- H. **Technical Review.** Every application for conditional district zoning shall conform to the technical review requirements set out in Section X in this UDO.
- I. **Planning Board Review.** Following the required technical review, the application shall be placed on the agenda for consideration at the next regularly scheduled Planning Board meeting.
- J. **Planning Board Recommendation.** The Planning Board shall submit a recommendation to the Town Council with a statement describing the following:
1. Whether the proposed conditional district is consistent with the comprehensive plan and other officially adopted plans, as applicable;
 2. The uses to be permitted in the district;
 3. Any required variation from the regulations of the underlying base zoning district, if any;
 4. Recommended conditions, if any.
- K. **Public Hearing.** Following consideration by the Planning Board, the application shall be forwarded to the Town Council for public hearing.
- L. **Notice of Hearing.** Public notice of the public hearing shall be posted, advertised, and mailed as follows:
1. *Posting Requirements.* Staff shall prominently post a notice of the public hearing on the site of the proposed rezoning or on an adjacent street or highway right-of-way within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required but the town shall post enough notices in strategically visible locations so as to provide reasonable notice to interested persons.
 2. *Newspaper Notification.* Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice

shall be published the first time not less than ten days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of the hearing.

3. **Mail Notification.** Staff shall mail a notice of the hearing to all property owners within 200 feet of the subject property by first class mail at the last address listed for such owners on the county tax records. The notice must be deposited in the mail at least ten but not more than 25 days prior to the date scheduled for the hearing. If this requirement would result in notices being sent to more than 50 different property owners, in lieu of mailed notice, the staff may publish a notice of the hearing as an advertisement in a newspaper of general circulation within the Town of Black Mountain, provided that such advertisement shall not be less than one-half of a newspaper page in size and all property owners residing outside the newspaper circulation area must still be notified by mail.
- M. **Approval.** The Town Council may approve or deny the application or may approve the application with reasonable and appropriate conditions attached. Any conditions to be attached must be consented to by the owner of the property in writing. The Council shall adopt a brief statement describing whether its action to either approve or deny the proposed rezoning is consistent or inconsistent with the comprehensive plan or any other adopted plan. A certified copy of the ordinance bearing the signature of the property owner to evidence the property owner's consent shall be recorded in the records of the Buncombe County Register of Deeds within 30 days of approval.
- N. **Effect of Approval.** Following approval, the applicant may proceed with the development pursuant to the approved site plan. If the proposed development involves the subdivision of land, approval of the master plan and conditional zoning designation shall serve as preliminary plat approval for the purposes of this code.
- O. **Final Approval.** Approval of final plats conforming to the approved master plan shall be approved by the planning director without the need for additional review ordinarily required for subdivisions or special use permits.
- P. **Substantial Changes.** Any substantial changes to an approved plan shall be reviewed by the Planning Board and approved or denied by the town council as a text amendment to the zoning ordinance. The following changes are considered substantial for purposes of this section:
 1. The addition or removal of land from the zone;
 2. The additional or relocation of a building or structure;
 3. Addition or relocation of streets, roads, or driveways not contemplated in the original plan;
 4. Modification of special performance criteria, design standards, or other conditions or requirements specified by the enacting ordinance;
 5. A change in land use or development type beyond that permitted in the enacting ordinance;
 6. An increase in the total number of residential dwelling units; or
 7. An increase of more than ten percent in total floor area of any nonresidential structures.
- Q. **All Other Changes.** The Planning Director shall have authority to review and either approve or deny any other proposed changes to the approved plan of development. Appeals from the decision of the Planning Director to approve or deny a proposed change shall proceed according to Section 8.01.10 of this Code.

Ref -- 4.6.2 Conditional zoning districts established.

THIS IS MOVED TO "A" above. A. Conditional zoning districts are established to provide flexibility in the development of property while ensuring that proposed development is compatible with neighboring uses. Conditional districts allow for uses or development of land not otherwise permitted in the underlying base district. Conditionally zoned property may be subject to additional conditions, standards and regulations to ensure that the development and use of the property are compatible with the surrounding uses and consistent with the comprehensive plan and other plans adopted by the town. Conditional zoning should not be used to relieve hardships that could be resolved by issuance of a variance.

B. Conditional zoning districts. the following conditional zoning districts are established:

1. Conservation residential conditional zoning district (CR-1 CZ)
2. Suburban residential conditional zoning district (SR-2 CZ)
3. Town residential conditional zoning district (TR-4 CZ)
4. Urban residential conditional zoning district (UR-8 CZ)
5. Office and institutional conditional zoning district (OI-6 CZ)
6. Neighborhood mixed use conditional zoning district (NMU-8 CZ)
7. Central business conditional zoning district (CB CZ)
8. Highway business conditional zoning district (HB-8 CZ)
9. Light industrial conditional zoning district (LI-8 CZ)
10. Heavy industrial conditional zoning district (HI-0 CZ)

C. General requirements. The following provisions shall apply in the administration of conditional zoning.

this has moved to C 1. No property shall be zoned as a conditional district except upon application of the owner or a duly authorized representative of the owner, pursuant to the procedure set out in section 1.5.5.

Moved to C ~~Moved to C~~ 2. A conditional district shall consist of land that will be planned and developed as a single development or as an approved series of development phases. The owner or owners of the property shall be legally capable of ensuring that development of the property will comply with all documents, plans, standards, and conditions approved by the town.

Moved to B 3. All standards and requirements of the corresponding general use zoning district shall be met, except to the extent that the conditions imposed by the conditional zoning may be more or less restrictive than the development standards.

Moved to C 4. Only those uses permitted in the underlying zoning district, whether by right or specially, shall be permitted in the conditional zoning district. Uses not otherwise permitted within the underlying zoning district shall not be permitted within the conditional district.

Moved to C 5. No variance or special use permit may be issued for developments on property subject to a conditional zoning ordinance.

Moved to D D. Conditions.

1. Site-specific standards and conditions may be imposed within a conditional district, provided such standards or conditions are approved by the town council and consented to by the petitioner in writing.

2. Standards and conditions may be proposed by the petitioner, by town staff, by recommendation of the planning board, or by the town council.

3. Standards and conditions imposed shall be limited to those that address the conformance of the development and use of the site to town ordinances and plans, or the impacts reasonably expected to be generated by the development or use of the site.

(Ord. No. O-21-07 , 8-9-2021)

2.02.03 Existing Conditional Districts

DO WE NEED TO DESCRIBE THESE IN THEIR OWN SECTION?

2.02.04 Institutional Campus District (ICD)

- A. **Purpose and Intent.** This district is intended to allow for the continued and future use, expansion, and new development of academic, religious, government, and similar type uses where such campus or facilities qualify for location. The purpose of this district is to maintain the overall design integrity of the campus or facility setting while minimizing any adverse impacts on the neighboring areas.
- B. **Permitted Uses.** The following uses include all accompanying facilities and accessory uses associated with their development that do not significantly impact the existing infrastructure (i.e., street capacity, water and sewer capacity, police or fire protection, or other service related town functions as described in the master plan) **and are hereby permitted:**
1. *Academic Institutions.* This will include, but is not limited to, primary, secondary, college, or specialized education organizations including technical schools.
 2. *Art Galleries and Museums.*
 3. *Assembly Facilities.* This is including totally enclosed meeting rooms, chapels, sanctuaries, and auditoriums, but not including sports stadiums or coliseums. Facilities are not to exceed size required to seat two times the student or institutional enrollment.
 4. *Campus Services.* These may include a bookstore or retail store generally intended for, but not limited to the sale of school or institution related books and supplies; CD's, videos, gifts, greeting cards, flowers, candy, packaged snacks, soft drinks, toys, items with school logos, shirts, jackets, caps, sporting equipment, and small electronic equipment (i.e., clocks, radios, and stereos). Other such uses under this general definition could include a cafeteria, coffee shop, snack bar, laundry, etc., as long as they are located in such a manner and sign is such as to emphasize that they are for the prime benefit of users and employees and not the general public, although they may be open to the public. Such facility shall be limited to 500 square feet or no more than five percent of the total campus or institutional building area, which ever is greater. Note: Any facility listed which will be over 500 square feet shall become a special use.
 5. *Classrooms, Laboratories, Observatories, and other associated facilities.*
 6. *Conference Facilities.* A facility developed for use in conjunction with other support facilities including but not limited to, bookstores, cafes or other allowed uses.
 7. *Golf Courses or Driving Ranges.* These shall be developed primarily for internal use by school or institutional membership.
 8. *Government Facilities.* Areas, buildings, and other support services required for use by federal, state, and local governments. (NOTE: Federal and state facilities will dictate their own use, and therefore, compliance with these regulations would be voluntary.)

9. *Libraries.*
10. *Parks.* This shall include, but is not limited to, non-enclosed athletic fields and associated seating.
11. *Recreational Facilities.* This shall include a health club or spa facilities. Such facilities could include, but would not be limited to, organizations or associations such as the YMCA or YWCA.
12. *Religious Institutions and Places of Worship.* These shall include facilities built for religious or academic study as well as other associated religious activities.
13. *Residential:* For use by user or staff population only.
 - a. Dormitories.
 - b. Duplexes, triplexes, quadraplexes.
 - c. Single-family residences.
 - d. Single-family residences with an accessory apartment.
14. *Teller Machines.*
15. *Wellness Facilities.* Facilities including, but not limited to, areas, buildings, and support facilities used for limited immediate care (infirmaries), long term residential care, or long term nursing care facilities. This may include a health care provider's office serving campus users only.

C. **Special Uses.** The following are considered special uses:

1. *Campus Services.* As described under permitted uses, but over 500 square feet in area.
2. *Enclosed Gymnasiums.* Such facilities shall be limited to enclosed buildings because of concerns for lights and noise.
3. *Parking Decks.*
4. *Recreational Facilities.* Those facilities not otherwise listed, such as swimming pools, playgrounds, bowling alleys, miniature golf, tennis courts, recreation center, etc. All uses shall be of a scale suitable for the internal needs of the institution or school and its population only.
5. *Residential.* Multi-family housing for user and staff use only with no more than four units per building.
6. *Stadiums, Coliseums, Amphitheaters.* Architectural plans shall show lighting, seating, and acoustics. Such facilities shall accommodate no more than twice the enrollment of the institution or school.
7. *Temporary Housing.* This will include guest houses and conference centers when owned or operated by the primary institution for the convenience of visitors.

D. **General Dimensional Requirements.**

1. *Minimum institutional development size.* The minimum site size shall be two acres.
2. *Minimum institutional development width.* The minimum lot width shall be 200 feet.
3. *Maximum density allowed for multiple-family dwellings.* The maximum density shall be ten units per acre. For calculating units per acre, lines shall be drawn and shown on a site plan indicating the acreage used for the housing development, including residential buildings, accessory buildings, yards, drives, parking, playgrounds, picnic and park areas designated for the residents, and other adjacent open space for the use only of the residents and their guests.
4. *Required Depth.* Minimum required depth of front, side, and rear yard shall depend on the type of building but in no case shall there be less than a 30-foot separation.

E. **General Requirements.** In order to develop within this district, the following minimum criteria must be met:

1. A master plan shall be required as described below.
2. The total campus or facility land area will be two or more contiguous acres whether in one parcel or not.

3. The land area of an existing campus may be expanded by the addition of contiguous property, and/or properties having at least one boundary within 100 feet of the original core campus property.

F. Buffering.

1. *Screening from Other Uses.* All campus or institutional uses shall be screened from adjacent residential, vacant, or commercial properties within 100 feet, so as to shield these properties from lights and noise, by the use of landscaping, natural vegetation, landscaped berm, topography, fence, or wall. The only such uses allowed within this 100-foot buffer area are:
 - a. Single-family dwellings.
 - b. Single-family dwellings with accessory apartments.
 - c. Duplex, triplexes and quadraplexes (two-, three-, and four-family) dwellings.
 - d. Parks (except spectator seating, which shall not encroach into the 100-foot buffer).
2. *Internal Screening.* Trash containers, outdoor storage areas, loading areas, facility vehicle yards, and similar equipment yards shall be required to be screened from other interior uses as provided by landscaping, natural vegetation, landscaped berm, topography, fence or wall. Such buffering shall be a minimum of six feet in height and completely opaque. Vegetative buffering, if used in part or whole as the buffering of choice, shall be at least four feet at time of planting and grow to the required six-foot height within a three-year period. All plantings shall be maintained in a manner that will provide an opaque buffer.
3. *Existing Structures.* When a property is rezoned to institutional campus development (ICD), existing structures on the property shall not be subject to the buffering or sign requirements of this chapter. Expansion of or changes to existing structures shall conform to all provisions of the ICD, except where impractical due to safety considerations or the Americans with Disabilities Act. When an existing structure is located within a buffer area, any changes to the structure shall be made so as to minimize the impact on the side(s) of the structure nearest to the property line.

G. Parking. All parking required by the uses in this district shall be provided on-site and in sufficient number not to require on-street parking off-campus, adjacent to campus, or encroachment on adjacent property. Parking shall be classified in the following manner:

1. *Minimum Required Parking.* Land reserved to meet parking demands for an institution, school, or other facility operations on a regular basis (daily operations, etc). Minimum requirements shall be one space for each three students and three-quarters (0.75) space for each employee. These areas shall be shown on the master plan and may be paved or not at the option of the institution, school, or other facility for which such parking is being developed. These areas shall be shown with the type of surface treatment to be used on such land (gravel, brick dust, paved, etc.) which is subject to approval by the town staff.
2. *Maximum Required Parking.* Land reserved to meet parking demands for an institution, school, or other facility operations on a non-regular basis. These areas shall be shown on the master plan as areas which will be used to meet these requirements for parking (example: graduations, ball games). These maximum requirements are as follows: one space for each two students, and one space for each full time employee. These areas shall be noted on the master plan but may remain in a natural or undisturbed state.

H. Rooftop Equipment. All rooftop equipment shall be enclosed in building materials that match the structure or are visually compatible with the structure.

I. Street Design Standard. All campuses or institutions shall have two points of connection to a town maintained street. If the street accessing the campus or institution shall be private, the street shall meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual. However, such streets may, at the discretion of the planning staff in consultation with public works staff, be allowed to remain unpaved with use of an approved surface treatment (gravel or other).

J. Sidewalks and Greenways.

1. Sidewalks or greenway easements shall be provided in locations shown on the adopted comprehensive pedestrian master plan. A fee-in-lieu of construction or dedication of easement may be provided to the town at an equivalent cost to construction upon approval of the town council.
2. Existing sidewalks at the time of development or re-development must be improved, repaired, or replaced as necessary in order to be compliant with town and ADA regulations as part of new projects.

K. Plan Review Procedure.

1. Meeting with planning, and development staff. Developer shall be required to meet with planning, and development staff for technical review prior to submitting a concept plan of the proposed development. The purpose of this meeting will be to acquaint the developer with the entire planning and developmental process for an ICD development.
2. Submittal of concept plan. A concept plan outlining the general elements of the overall development, including, but not limited to, building footprints, street layout (with roadway widths), natural areas, floodway areas, floodplain areas, and proposed recreation areas.
3. Submittal of master plan. The master plan shall be submitted no less than 30 days after the submittal of the concept plan. This time frame shall also be at least 30 days before the next regularly scheduled planning board meeting. The application for rezoning and rezoning fee should be submitted at this time. Such a plan shall be developed by a professional architect or civil engineer licensed to practice in the State of North Carolina. The applicant shall submit 12 complete copies of the master plan. To ensure clarity of the master plan presentation, utilities, landscaping, topography, and other specific categories of information may be required to be presented on separate layers, if, and as determined necessary, by the town staff. The master plan may be submitted and approved in separate phases in order to facilitate the long term development of the overall campus.
4. Planning board considers rezoning request and the master plan. The planning board shall consider rezoning request and the master plan for the institutional campus development district at the next regularly scheduled planning board or a special called meeting. A recommendation is made by the planning board to the town council.
5. Rezoning request and master plan review by town council. Recommendation for rezoning is submitted to town council and, if approved, the town council can then review the master plan.
6. Before approving a master plan and subsequent rezoning, the town council shall first hold a public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of hearing.
7. Staff shall prominently post a notice of the public hearing on the site of the proposed master plan and rezoning or on an adjacent public street or highway right-of-way. Staff shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed master plan and rezoning and the date of the public hearing. Notice shall also be posted to the town website indicating the date and time of the hearing.
8. Changes to the master plan. If the project represents a substantial change from the approved master plan, a new master plan must be submitted for planning board and the town council approval. A "substantial change" means a change that, in the opinion of the planning, and development staff, substantially affects existing traffic circulation, drainage, relationship of buildings to each other, landscaping, buffering, or outdoor lighting; or significantly impacts existing infrastructure or town services (i.e., street capacity,

water and sewer capacity, police or fire protection, or other service related town functions) or any change that may result in impact on neighboring properties and residents. Such changes shall include, but are not limited to:

- a. Addition or relocation of a building;
- b. Addition or relocation of a parking lot for over ten vehicles;
- c. Addition or relocation of parking or outdoor storage for service vehicles or equipment;
- d. Addition or relocation of any other major development (i.e., ball fields, tennis courts, golf courses, amphitheaters, or any other facility to be used by numerous people at one time);
- e. Relocation of a public street or private street connecting with the public street system;
- f. Any changes to areas such as small picnic areas, playgrounds, walking trails, gardens, patios, terraces, courtyards, walkways, and parking areas for ten or fewer vehicles, which do not constitute a "substantial change" may be approved by the planning director or his/her designee.

9. The town council may deny the master plan, approve the master plan, or approve the master plan with conditions. The conditions upon the installation and operation of the proposed use(s) shall address the accumulated potential impact of the proposed use, including lighting, glare, noise, etc. in order that the use shall:

- a. Not interfere with the use of the other properties or alter the existing character of the immediate vicinity;
- b. Provide potential pedestrian or vehicular traffic that could be generated by the use(s) with adequate and safe connections to adjoining streets and pedestrian paths; and
- c. Provide adequate parking and access controls to the benefit of the property itself and the adjoining properties.

- L. **Supplementary District Regulations.** All permitted uses and special uses in this district are subject to approval of installation and materials by the public works director as designated, of curbs, gutters, storm drainage structures, sidewalks, entrances and exits, street paving, water and sewer facilities, and garbage collection procedures.

M. **Signs.**

1. Awning and canopy signs, marquee and time and temperature signs are not permitted.
2. Banners, flags and pennants may only be used temporarily for special events and with the approval of the town zoning administrator. A plan showing diagrams of each type of banner, flag, or pennant and their method of installation must be submitted to the planning department for approval at least 30 days prior to the special event making use of these banners, flags, or pennants. The total amount of display time during which such banner, flag, or pennant shall be allowed to be used shall be a total of 30 days. The installation cannot be initiated until appropriate approval is received and not more than one week prior to the event. Banners, flags, or pennants must not obstruct any fire escape, window, or door, or be placed in such a manner so as to interfere with any openings required for ventilation, nor offer hindrance to fire department equipment or personnel. Banners, flags, or pennants may be placed in or along the right-of-way of public streets immediately adjacent to the campus, providing a letter of permission from the proper utility company and/or property owner, holding the town harmless, is submitted if the banner, flag, or pennant is to be attached to any utility pole or to any tree or other object located on private property. Nothing in these requirements shall be construed to imply any restriction or prohibition on the appropriate display of any official flag of the United States, the State of North Carolina or any other government entity.
3. Manner of installation must be based on the established safety standards.

4. The banners, etc., must be made of fire-retardant material or treated to be fire retardant.
5. Maximum. The size of any banner, flag, etc. shall be 32 square feet.
6. Minimum. For safety reasons, a required seven-foot clearance above the sidewalk, if overhanging any sidewalk. For safety reasons, a required ten-foot clearance above the sidewalk, if above any street, driveway, alley, or any other vehicular travel way. More clearance may be required if the street involved warrants it.
7. Building identification (I. D.) signs may be building or ground-mounted. They must be a maximum of seven feet above the ground with a maximum surface area of 24 square feet. Only one sign per building is allowed for identification purposes.
8. Campus entrance signs shall be a maximum of seven feet above ground with a maximum surface area of 32 square feet. Only one sign per entrance to the campus at a public street, and at a major walkway considered to be the main entrance shall be allowed.

Minimum Building Separation by type (in feet):

1	2	3	4	5	
40	40	40	40	40	1
-	30	30	40	40	2
-	-	30	40	40	3
-	-	-	40	40	4
-	-	-	-	40	5

1. Non-residential primary use building
2. Single-family
3. Duplex
4. Dormitory
5. Multifamily (C.5. above)

§ 2.04 Land Use Standards (Administrative and Special)

2.04.01 Purpose and Applicability

- A. **Purpose.** The purpose of this Section is to promote compatibility among land uses in the Town by establishing specific standards for the establishment of permitted, limited, special, accessory, and temporary uses. In addition, this section shall detail the process for conditional zoning within the Town of Black Mountain.
- B. **Applicability.**
 1. *Approval of Uses Permitted.* For uses permitted (P), they are by right within the applicable standards of this UDO.

2. *Approval of Uses Permitted with Limitations.* For uses permitted with limitations (L), the Planning Director or designee shall use the standards set out in Section 2.04.05, Limited Use Standards, to determine whether to approve or disapprove.
3. *Approval of Conditional Zoning.* Any conditional zoning with the Town of Black Mountain shall follow the standards in Section 2.04.06, *Conditional Zoning*.
4. *Approval of Special Uses.* For special uses (S), the Board of Adjustment shall use the criteria set out in Section 2.04.07, Special Use Permits, to determine whether to approve, approve with conditions, or disapprove.
5. *Approval of Accessory and/or Temporary Uses and/or Structures.* For accessory or temporary uses or structures, the applicable standards in each section shall apply.
6. *Other Applicable Standards.* The standards of this Section are applied in addition to the other applicable standards of this UDO.

2.04.03 New and Unlisted Uses

- A. **Director Discretion.** Each of the use categories and specific uses listed in the tables in 2.04.04, *Land Use Matrix* are defined in 11.02.01, *Definitions*.
- B. **Unlisted Uses.** When a proposed use is not specifically listed in 2.04.04, *Land Use Matrix*, the Director shall determine if the use is the same as, or manifestly similar to, a listed use in form and function. If the proposed use is determined to be the same as, or manifestly similar to, a listed use, he shall classify the proposed use as the listed use. If the Director finds that a proposed use is not the same as, or is not manifestly similar to, a listed use, he shall classify the proposed use as not permitted, in each case, the zoning enforcement officer shall maintain a written record of such interpretations. ~~4.7.13.2 Uses not specifically listed.~~ A use that is defined in Chapter 1 of this Land Use Code, but not listed in the permitted uses table, is prohibited. A proposed use that is not defined in Chapter 1 and not listed in the permitted uses table shall be allowed or prohibited in the same manner as that use appearing in the permitted uses table which is most similar to the proposed use based upon the type and amount of activity, the likely impact on surrounding property, and the conditions of the site upon which the use will take place, as determined by the zoning administrator. The zoning permit issued for the proposed use shall state the proposed use, the next most similar use as determined by the zoning administrator, and the reasons for so categorizing the proposed use.
- C. **Referral to Planning Board.** Should the Director determine that it is necessary, he or she may refer the determination of whether a use fits in a use category or is functionally similar to a specific use to the Planning Board.
- D. **Decision Criteria.** The Administrator or the Planning Board, as appropriate, shall evaluate the proposed use based on the following criteria:
 1. *Parking demand;*
 2. *Average daily and peak hour trip generation (cars and trucks);*
 3. *Impervious surface;*
 4. *Regulated air or water emissions;*
 5. *Noise;*
 6. *Lighting;*
 7. *Dust;*
 8. *Odors;*
 9. *Solid waste generation;*

10. *Potentially hazardous conditions, such as projectiles leaving the site;*
11. *Use and storage of hazardous materials;*
12. *Character of buildings and structures;*
13. *Nature and impacts of operation; and*
14. *Hours of operation.*

E. **If Not Authorized Then Prohibited.** If the Director or Planning Board determines that a proposed use is not part of a defined use category or functionally similar to a listed specific use, then the use is a prohibited use.

2.04.04 Land Use Matrix

- A. **Principal Uses.** In interpreting what is a principal use, the principal use shall be considered as the primary purpose or function that a lot or structure serves or is proposed to serve. Two or more principal uses may be permitted to occupy the same land or building as long as each use is a permitted use.
- B. **Accessory Uses.** An accessory use shall be considered a structure or use that meets the criteria set forth in X, Accessory Use and Structure Standards.
- C. **Permitted Uses.** Table X-1, Permitted Uses by Zoning District, lists the land uses permitted in the various zoning districts.
1. **Symbols.** Table X-2 uses the following symbols:
 - a. "P" means that the land use is Permitted by Right subject to the standards that apply to all Permitted Uses.
 - b. "L" means that the land use is Permitted with Limitations in the same manner as a Permitted Use subject to Section X, Limited Use Standards.
 - c. "S" means that the use is allowed as a Special Use, which may be approved following a public hearing by the Board of Adjustment.
 - d. "--" means that the use is a Prohibited Use in the specified zoning district.
 2. **Unlisted Use Categories and Uses.** A use category or specific use is prohibited if it is not listed in Table X-1 and if the Director cannot interpret an unlisted specific use as functionally similar to a use that is allowed, based on the criteria in Section X, New and Unlisted Uses.

Use Category	Specific Use	C R - 1	S R - 2	T R - 4	U R - 8	N M U- 8	O I- 6	C B D	H B - 8	L I - 8	H I O
Agricultural and Residential											
	Auction Sales – Livestock Only									P	P
	Beekeeping/Apiaries	L	L	L	L	L	L		L	L	L
	Urban Chickens	L	L	L	L	L	L	L	L	L	L

	Farmer's Market					P	P	P	P	P	P
	Fruit/Vegetable Stand	P	P	P	P	P	P	P	P	P	P
	Forestry and Logging	P									P
	Hunting and Game Preserve (Commercial)	P									
	Pet Care Service (without outdoor kennels)					P	P	P	P	P	P
	Pet Care Service (with outdoor kennels)	P					P		P	P	P
	Veterinarian Office or Hospital, Large Animal								P	P	P
	Veterinarian Office or Hospital, Small Animal					P	P	P	P	P	P
	Agriculture	L	L	L	L	L	L		L		
	Garden Markets	L	L	L	L	L	L	L	L		
	Community Garden	P	P	P	P	P	P	P			
Household Living	Two-Family Dwelling	P	P	P	P	P	P				
	Multi-Family Dwelling		S	S	S	S	S	S	S		
	Single-Family Dwelling, Attached	P	P	P	P	P	P				
	Single-Family Dwelling, Detached	P	P	P	P	P	P				
	Manufactured Home Park			S	S				S	S	
	Manufactured Home, Single-Wide*			P	P				P	P	

	Manufactured Home, Double-Wide	P	P	P	P	P	P		P	P	
	Secondary Dwellings	L	L	L	L	L		L			
	Shared Housing/Community Living Facilities				P	P	P		P	P	P
	Cottage Housing Development	S	S	S	S	S	S		S		
	Planned Unit Development - Residential	S	S	S	S	S	S		S	S	
	Accessory Structures	P	P	P	P	P	P	P	P	P	P
	Home Occupations	L	L	L	L	L	L	L	L	L	L
Group Living	Family Care Home	L	L	L	L	L	L	L	L	L	
	Residential Care Facility	L	L	L	L	L	L	L	L	L	
	Congregate Care Facility						S				
	All Other Group Living Uses	L	L	L	L	L	L	L	L	L	
Institutional and Civic											
Community Amenities	Swimming Pool	P	P	P	P	P	P	P	P		
	Library	P	P	P	P	P	P	P	P		
	Ball Fields/Soccer Fields	P	P	P	P	P	P	P	P		
	All Community Amenities	P	P	P	P	P	P	P	P		
Day Care	All Day Care Uses				L	L	L	L	L		
Educational Facilities	School, Public or Private, Elementary or Secondary						P		P	P	P

	University or College						P		P	P	P
	All Other Educational Facilities						P		P	P	P
Government Facilities	Correctional Institution										L
	All Other Government Facilities	P	P	P	P	P	P	P	P	P	P
Medical Facilities	Medical and Dental Office					P	P	P	P	P	P
	Hospital								P	P	P
	Nursing Care Institution						S				
	All Other Healthcare Facilities					P	P	P	P	P	P
Parks and Open Areas	Cemeteries & Mausoleums						P		P	P	P
	Parks and Open Space Areas	P	P	P	P	P	P	P	P	P	P
	Recreation Services, Indoor					P	P		P	P	P
	Recreation Services, Outdoor	L	L	L	L	L	L	L	L	L	L
	Country Club and Golf Course						P		P		
	Zoo						L		L	L	L
	All Other Parks and Open Areas	P	P	P	P	P	P	P	P	P	P
Passenger Terminals	Airport									L	L
	Park-and-Ride Facility/Transit Terminals						P	P	P	P	P

	Taxi and Transportation Services					P	P	P	P	P	P
	All Other Passenger Terminals					P	P	P	P	P	P
Public Assembly	Club, Private					P	P	P	P	P	P
	Convention Center/Visitors Bureau							P	P	P	P
	Conference Center							P	P	P	P
	Meeting Halls for Civic, Social, and Fraternal Uses	P	P	P	P	P	P	P	P	P	P
	Places of Worship	P	P	P	P	P	P	P	P	P	P
	Cultural & Community Facilities							P	P	P	P
	All Other Public/Religious Assembly Uses							P	P	P	P
Utilities	Solar Farm	L								L	L
	Amateur Radio Antenna	S	S	S	S	S	S	S	S	S	S
	Wireless Telecommunications Tower								S	S	S
	Public Utilities	P	P	P	P	P	P	P	P	P	P
Commercial											
Entertainment, Indoor	Amusement Arcade								P	P	P
	Brewery/Distillery/Winery/Cidery						P	P	P	P	P
	Microbrewery/Microdistillery/						P	P	P	P	P

	Microwinery/Microcidery										
	Dance Halls, Night Clubs, Private Clubs, Bars, Lounges, Taverns, Pubs						P	P	P	P	P
	Fortune Telling/Palm Reading							P	P	P	P
	Reception Facility	P					P	P	P	P	P
	Tattoo Parlor, Body Piercing								L	L	L
	All Other Indoor Entertainment, excluding Sexually Oriented Businesses							P	P	P	P
Entertainment, Outdoor	Amusement Park								P	P	P
	Drive-In Theater							L		P	P
	All Other Outdoor Entertainment							P	P	P	P
Offices	Contractors Office (without outdoor storage)									P	P
	Contractors Office (with outdoor storage)										P
	Financial Institutions							P	P	P	P
	Accounting					P	P	P	P	P	P
	Insurance					P	P	P	P	P	P
	Engineering Services					P	P	P	P	P	P
	Counselors and Therapists					P	P	P	P	P	P
	Healthcare Providers					P	P	P	P	P	P

	Property Management					P	P	P	P	P	P
	Architect					P	P	P	P	P	P
	Lawyer					P	P	P	P	P	P
	All Other Office Uses					P	P	P	P	P	P
Overnight Accommodations	Bed and Breakfast Home	P	P	P	P	P	P	P	P		
	Bed and Breakfast Inn	P	P	P	P	P	P	P	P		
	Boarding House	L	L	L	L	L	L	L			
	Hotel							P	P	P	P
	Motel							P	P	P	P
	Short-Term Rental	L	L	L	L	L	L	L	L		
	Summer Camp	P	P	P	P		P				
	Campground						S		S	S	S
	Recreational Vehicle Park						S		S	S	S
	All Other Overnight Accommodations							P	P	P	P
Parking, Commercial	Truck, Tractor Trailer, or Bus Storage (does not include inoperable vehicles)										P
	Automobile Parking										P
	All Other Commercial Parking Uses (does not include inoperable vehicles)										P
Retail, Repair,	Firearms and Ammunition Sales								P	P	P

Sales, and Service Uses	Funeral Home (without crematorium)								P	P	P
	Funeral Home (with crematorium)								P	P	P
	Lawn and Garden Supply (without outdoor display or storage)							P	P	P	P
	Lawn and Garden Supply (with outdoor storage display or storage)								P	P	P
	Liquor Sales (ABC Store)								P	P	P
	Outdoor Market					P	P	P	P	P	P
	Flea Market								P	P	P
	Pawn Shop								P	P	P
	Vaping and Tobacco Shop								L	L	L
	Art Studio and Galleries				P	P	P	P	P	P	P
	Convenience Store					P		P	P	P	P
	Health and Fitness Facilities					P	P	P	P	P	P
	Heritage Crafts				L			P	P	P	P
	Instruction Services and Studios								P	P	P
	Laundromat					P	P		P	P	P
	Laundry and Dry Cleaning							P	P	P	P
	Farm Supply Store								P	P	P

	Retail							P	P	P	P
	Retail (up to 2,500 sf)						P		P	P	P
	Grocery Store								P	P	P
	Neighborhood Market					P	P		P	P	P
	Corner Store					P	P		P	P	P
	Bookstore							P	P	P	P
	Fitness Studio and Gym							P	P	P	P
	Moving Van Rental								P	P	P
	Mixed-Use Residential/Non-Residential					P	P	P	P	P	P
	Mixed-Use Non-Residential						P	P	P	P	P
	Drug Store							P	P	P	P
	Hair Salon/Barber Shop							P	P	P	P
	Beauty Parlor/Nail Salon							P	P	P	P
	Printing							P	P	P	P
	Building Material Sales								P	P	P
	Mobile Retail					P	P	P	P	P	P
	Florist					P	P	P	P	P	P
	CBD Dispensary							P	P	P	P
	Planned Unit Development – Commercial					S	S	S	S	S	S

	All Other Retail Sales and Service							P	P	P	P
	Restaurant (with drive-thru)								P	P	P
	Restaurant (without drive-thru)	P						P	P	P	P
	Bakery							P	P	P	P
	Café and Coffeeshop							P	P	P	P
	Ice Cream Parlor							P	P	P	P
	Mobile Food Vendor							L	L	L	L
	Mobile Food Vendor Court							L	L	L	L
	All Other Restaurant Uses								P	P	P
Sexually Oriented Business	All Sexually Oriented Businesses								S		S
Vehicle Sales and Service Uses	Automobile Repair, Major								P	P	P
	Automobile Repair, Minor							P	P	P	P
	Automobile Towing and Temporary Storage									P	P
	Car Wash								P	P	P
	Fuel Sales							P	P	P	P
	Manufactured/Modular Home and Storage Building Sales								P	P	P
	Neighborhood Fueling Facility					L	L				

	Truck Stop, Travel Plaza									P	P
	Vehicle Sales and Rental								P	P	P
	Heavy Equipment Sales, Rental and Service								P	P	P
	All Other Vehicle Sales and Service Uses								P	P	P
Industrial											
Heavy Industrial	Animal Processing									P	P
	Asphalt and Concrete Mixing Plants										P
	Fertilizer Manufacturing										P
	Chemical Treatment									P	P
	Freight Handling Facilities									P	P
	Distribution									P	P
	Industrial Park Development								S	S	S
	All Other Heavy Industrial Uses									P	P
Light Industrial	Small Scale Manufacturing									P	P
	Micromanufacturing									P	P
	Scientific Research & Development Services								P	P	P

	Laboratories and Research Facilities								P	P	P
	Industrial Cleaning Service									P	P
	All Other Light Industrial Uses									P	P
Self-Service Storage	Mini-Storage									P	P
	Self-Storage								P	P	P
	All Other Self-Service Storage Uses								P	P	P
Warehousing and Storage	All Warehousing and Storage								P	P	P
Waste Related Service	Landfill										P
	Salvage Yard										S
	Junk Yard										S
	Recycling Sorting, Processing, or Storage									P	P
	Wood and Yard Waste Facility										P
	All Other Waste Related Service									P	P
Wholesale Trade	Building Material Supply (with outdoor storage)								P	P	P
	Farm Products, Sales, Bulk								P	P	P
	Farm Supply Product Sales (with outdoor storage)								P	P	P

	Florist and Nursery Supply (with outdoor storage)								P	P	P
	Lumber Yards										P
	All Other Wholesale Trade (without outdoor storage)								P	P	P

2.04.08 Accessory Use and Structure Standards

2.04.08.01 General Provisions

- A. **Applicability.** Permitted accessory uses and structures are permitted based upon the regulations herein. If a Primary use is listed as prohibited in a zoning district but is permitted as an Accessory Use, the use is permitted only as an accessory use to a principal use or principal building on the same property.
- B. **Required to be Incidental.** The use or structure is clearly incidental to and customarily found in connection with a principal building or use.
- C. **Required to be Subordinate.** The use or structure is subordinate to and serves a principal building or principal use; is subordinate in area, extent, or purpose to the principal building or principal use served; contributes to the comfort, convenience, or necessity of occupants, business or industry in the principal building or principal use served; and is located on the same zone lot as the principal building or use served.
- D. **Where Permitted.** Accessory Uses and Structures are permitted in accordance with 2.04.04, Land Use Matrix.
- E. **Establishment.** Accessory uses and structures shall not be constructed or established on a lot until construction of the principal building has commenced or the primary use is established. Accessory buildings shall not be used for dwelling purposes.
- F. **Specific Exception for Bona Fide Farms.** For land used for agriculture or as a bona fide farm that is greater than one acre, there is no limit to the number of accessory structures allowed, provided that such structures shall be incidental to the agricultural use and shall not cover more than 30 percent of the total lot area.

2.04.08.03 Accessory Structures

- A. **District Specific Requirements.**
 1. *Industrial.* In industrial districts, there is no limit to the number of accessory structures provided that such structures are incidental to the industrial use.
 2. *Commercial.* In commercial districts, unless otherwise provided in a special use permit, no more than two accessory structures shall be permitted per lot.
 3. *Office and Institutional.* **NEED TO DISCUSS.**
 4. *Residential and Mixed-Use.* In residential and mixed-use districts, no more than two accessory structures shall be permitted per lot, provided that any such structure shall meet the following requirements:
 - a. Accessory structures shall not be more than two stories.
 - b. For lots adjacent to town or state roadways, accessory structures shall be located only in the side or rear yards.

- c. For lots not adjacent to town or state roadways, accessory structures may be located in what is determined as the front yard by the zoning administrator. The accessory structure may be located no further forward than the primary structure furthest from the road of any adjacent properties never to be less than the existing setback requirements.
- d. Accessory buildings shall not cover more than 30 percent of the required side or rear yards. Accessory structures may require screening at the direction of the zoning administrator if the accessory structure may be considered a nuisance under the town's nuisance regulations or if it is being used for commercial purposes while abutting a residential use or district.

B. Dimensional Requirements.

- 1. *Height.* Accessory structures shall not exceed the standard height regulations of the zoning district when the accessory structure is located within the buildable lot area or fifteen feet in height, where the accessory structure is located within a principal structure setback area.
- 2. *Size.* An accessory building shall not exceed the ground floor area of the principal building.
- 3. *Setbacks.* In no case shall an accessory structure be located closer than five feet to the nearest property line.

C. Site Requirements.

- 1. *Lighting.* Exterior lighting for accessory uses and/or structures shall be placed so as to not directly or reflect light upon adjoining land.

D. Exemptions. The following uses/structures shall be exempt from the provisions of this Section:

- 1. *Fencing and Walls.* Fences and walls are excluded from these provisions; however, in no case shall a rear or side yard fence exceed seven feet with the exception of recreation facility fences. Front yard fences shall not exceed five feet in height.
- 2. *Mailboxes.* Mailboxes shall be regulated by the USPS and are permitted to be located within the setback provided they are not a structural element that interferes with visibility.
- 3. *Plant Materials.* Plants are not considered setback violations unless they interfere with the site triangle or vehicular visibility.
- 4. *Setback Exception.* Any structure or improvement, once installed, is at grade or less than one foot above grade. These additions are not considered setback violations.

E. Approval of Accessory Uses and Structures. The standards in this Section apply to accessory uses and structures that are listed as permitted subject to limitations or that require a Special Use Permit in 2.04.07.

F. Specific Standards for Certain Accessory Structures. Certain accessory structures require additional standards as follows:

- 1. *Swimming Pools.* A private swimming pool along with incidental installations, such as pumps and filters, is permitted in any residential zoning district subject to the following standards:
 - a. *Location.*
 - i. The swimming pool and incidental installations shall not be located in the front yard.
 - ii. The swimming pool shall be set back from all lot lines a distance of not less than five feet.
 - b. *Screening.* All swimming pools shall be enclosed from adjoining lots by the Principal Building, an Accessory Building, a solid wall, or a protective fence of not less than four feet in height.
 - c. *Building Code Requirements.* All swimming pools must also meet the requirements for the North Carolina State Building Code, including fence requirements.
 - d. *Solid Waste Storage Areas.* Solid Waste Storage Areas for all uses not employing roll cart garbage collection shall meeting the following requirements:

- e. Screening.
 - i. Required. Solid waste dumpsters or other large containers for solid waste or recycling storage shall be confined in an enclosed area that is screened on all sides.
 - ii. Size and Material. A solid waste enclosure, large enough to confine solid waste items and dumpster(s), shall be of solid opaque construction, six-foot high with latching gates providing access, and shall be composed of materials consistent and compatible with those of the principal building(s) on the site.
 - iii. Location. No solid waste storage area shall be located in any front building yard setback or any street yard or buffer yard.
 - iv. Lid Required. Solid waste dumpsters or other large containers for solid waste storage shall have a lid to minimize the potential contamination of stormwater runoff.
- 2. *Portable On-Site Storage.*
 - a. Generally. The following requirements apply to any residential zoned or used property upon which a portable on-site storage unit is to be placed.
 - b. Number. There shall be a maximum of two portable on-site storage units per parcel at any one time.
 - c. Location. A unit shall be placed in the side or rear yard only. However, the unit may be placed in the front yard if side and rear areas are not accessible, as determined by the Director (unless the unit adversely impacts safety, sight triangles, or emergency response access).
 - d. Setbacks. A unit shall be placed a minimum of five feet from side and rear property lines. There is no minimum spacing between units.
 - e. Tenure. A unit may remain on the parcel for a maximum of 90 days per calendar year without obtaining a Temporary Use Permit. A written reason, timeline, and completion date must be submitted by the applicant prior the issuance of the permit.
- 3. Recycling Facilities and Drop Off Sites.
 - a. *Unattended Clothing Donation Containers.* Unattended clothing donation containers are prohibited unless located at the operational site of a company or organization that collects used clothing for resale or donation as a primary business function.
 - b. *Removal of Prohibited Clothing Donation Containers.* Prohibited clothing donation containers that exist at the time this section is adopted shall be removed within 30 days of adoption.

previous language (all integrated above except B, which was moved to General Provisions)

Ref -- 4.5.4 Accessory structures.

- A. In no case shall an accessory structure be located closer than five feet to the nearest property line.
- B. **(moved to general provisions)** For land used for agriculture or as a bona fide farm that is greater than one acre, there is no limit to the number of accessory structures allowed, provided that such structures shall be incidental to the agricultural use and shall not cover more than 30 percent of the total lot area.
- C. In industrial districts, there is no limit to the number of accessory structures provided that such structures are incidental to the industrial use.
- D. In commercial districts, unless otherwise provided in a special use permit, no more than two accessory structures shall be permitted per lot.
- E. In residential and mixed-use districts, no more than two accessory structures shall be permitted per lot, provided that any such structure shall meet the following requirements:

- A. Accessory structures shall not be more than two stories.
- B. For lots adjacent to town or state roadways, accessory structures shall be located only in the side or rear yards.
- C. For lots not adjacent to town or state roadways, accessory structures may be located in what is determined as the front yard by the zoning administrator. The accessory structure may be located no further forward than the primary structure furthest from the road of any adjacent properties never to be less than the existing setback requirements.
- D. Accessory buildings shall not cover more than 30 percent of the required side or rear yards. Accessory structures may require screening at the direction of the zoning administrator if the accessory structure may be considered a nuisance under the town's nuisance regulations or if it is being used for commercial purposes while abutting a residential use or district.

2.04.09 Temporary Use and Structure Standards

- A. **Generally.** Permitted temporary uses and structures are set forth in Table 2.04.09-1, Permitted Temporary Uses and Structures.
- B. **Purpose.** The Temporary Use Permit is a mechanism to allow a use on a short-term basis and certain seasonal or transient uses not otherwise allowed. Prior to conducting or establishing a temporary use or structure, approval of a Temporary Use Permit by the Director is required.
- C. **Permitted Temporary Uses.** The uses listed below, shall be permitted by right (unless noted otherwise) in each of the listed zoning districts.

Table 2.04.09-1 Permitted Temporary Uses and Structures											
TP = Temporary Permitted Use -- = Prohibited Use Maximum Events per Year / Days per Event (Duration Column)		Zoning District									
Temporary Use	Duration (Maximum Events per Year/Days per Event)	CR-1	SR-2	TR-1	UR-8	NMU-8	OI-6	CBD	HB-8	LI-8	HI-0
Contractors' Office (Temporary)	N/A ¹	P	P	P	P	P	P	P	P	P	P
Fireworks Stand	1 / 45	-	-	-	-	-	P	P	P	P	P
Outdoor Circus, Carnival, Exhibition, or Show	1 / 30	-	-	-	-	-	-	-	P	P	P
Real Estate Office in a Construction Trailer or Temporary Modular Unit	N/A ¹	P	P	P	P	P	P	P	P	P	P
Real Estate Office in a Model Home	N/A ¹	P	P	P	P	P	-	-	-	-	-
Religious Tent Meeting	2/60	P	P	P	P	P	P	P	P	P	P
Retail Sales, Open Lot	2/60	-	-	-	-	-	-	P	P	P	P
Seasonal Sale of Agricultural Products	4 / 30	P	P	P	P	P	P	P	P	P	P
Sidewalk Vendor	3 / 45	-	-	P	P	P	P	P	P	P	P
Temporary Residence in Mobile Home During Construction of New Home	Note 1 below	P	P	P	P	P	-	-	-	-	-
Temporary Storage Container	1/120	P	P	P	P	P	P	P	P	P	P

¹See 3.02.03.

- D. **Review Criteria.** All temporary uses listed in this Section require a Temporary Use Permit. The Director shall not approve or modify and approve an application for a Temporary Use Permit unless the following general criteria, specific regulations and time limitations are met in addition to standards for any particular temporary use as specified.
1. **Compatibility with and/or Effect on Surrounding Area.** The allowance of such use shall not be detrimental to the public health, safety, and general welfare, and the use shall be consistent with the purpose and intent of this UDO and the specific zoning district in which it will be located. The use must also be compatible in intensity, characteristics, and appearance with existing land uses in the immediate vicinity of the temporary use. In addition to those listed herein, factors such as location, noise, odor, light, dust control and hours of operation shall be considered.
 2. **Public Convenience and Litter Control.** Adequate public restroom facilities and waste containers shall be required on-site.
- E. **Cessation of Use.** After the temporary use is finished, the site shall be returned to its condition prior to the temporary use being established, including, but not limited to, removal of all litter and any other facilities related to the use, at no expense to the Town of Black Mountain.
- F. **Outdoor Lighting.** All light sources must be directed inward to the site and downward and away from adjacent properties.
- G. **Utilities.** Temporary uses must provide sufficient potable water and adequate sewage disposal.
- H. **Number per Parcel.** Only one Temporary Use Permit shall be permitted for a single parcel of land at any given time. If additional temporary uses are desired, the Board of Adjustment may permit under a Special Use Permit in accordance with [2.04.07](#).
- I. **Signs.** Signage for temporary uses shall be permitted only within the time frame for which the temporary use is permitted in accordance with the sign standards in [Chapter 4](#).
- J. **Property Line Setbacks.** Structures and/or display of merchandise shall comply with the yard and property line setback requirements of the zone district within which it is located. The items shall be displayed so as not to interfere with the sight triangle of the intersection of the curb line of any two streets or a driveway and a street. In no case shall items be displayed, or business conducted within the public right-of-way.
- K. **Parking and Access.** Adequate off-street parking shall be provided to serve the use. The use shall not displace the required off-street parking spaces or loading areas of the principal use. The entrance and exit drives shall be designed to prevent traffic hazards and nuisances.
- L. **Traffic.** The location of the temporary use or structure shall be such that adverse effects on surrounding properties will be minimal, particularly regarding any type of traffic generated or impacted by the temporary use or structure and impact upon traffic circulation in the area.
- M. **Location (Permission Required).** The use shall not be on publicly or privately owned property unless the applicant first obtains written approval from the owner.
- N. **Emergency Access.** The use shall not block drive aisles, other access to loading/service areas, or emergency access and fire lanes. It must also be positioned at least 15' away from fire hydrants, any fire department connection, driveway entrances, and accessible parking spaces.
- O. **Period of Time Between Permits.** The period of time an expired Temporary Use Permit on a parcel and application for another Temporary Use Permit on that parcel shall be at least three months. This restriction shall not apply to real estate development and constructed related temporary uses.
- P. **Similar and Compatible Uses not Specified.** If a particular temporary use is not listed in this UDO, the Director shall have the authority to grant a temporary use permit for a similar and compatible use. Determination of

what constitutes similar and compatible shall be made by the Director. In such instances, the applicant shall provide the following information:

1. Type of use;
2. Number of employees;
3. Parking/circulation needs/hours of operation; and
4. Duration of operation.

- Q. **Appeals.** If the Director determines that the use is not similar and compatible, the applicant may appeal the decision to the Board of Adjustment.

Previous language- all integrated above

4.7.13.3 Temporary uses.

A. *Purpose.* This section is intended to permit certain temporary uses of property while ensuring public safety, health and welfare.

B. *Requirements. for storage units or "PODS".*

This section applies to temporary, self-contained storage units, not including trailers for office use or temporary shelter, which are intended to be picked up and moved to various locations on demand.

The maximum time a temporary storage unit shall be placed on a parcel is 120 days.

PODS shall be placed so as not to interfere with traffic or as to create a traffic hazard.

C. *Requirements for outdoor religious meetings.*

1. Religious meetings in a tent or other temporary structure shall not exceed a period of 60 days, unless approved by the zoning administrator related to on-going construction.

D. *Requirements for open lot sales.*

1. Temporary open lot retail sales shall be permitted in all industrial or commercial districts only.
2. Such use shall not exceed a 60-day period.

§ 2.05 Measurements and Allowances

2.05.01 Measurements

Table 2.05.01-1, *Measurements*, below, provides the method of measurement for the developmental standards in this UDO.

Table 2.05.01-1, Measurements

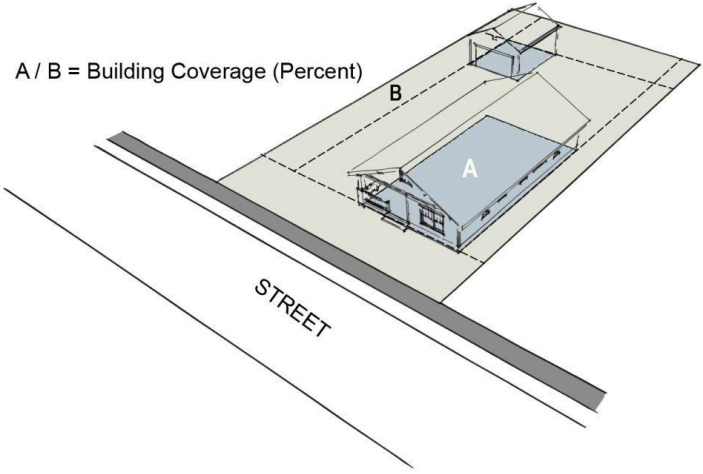
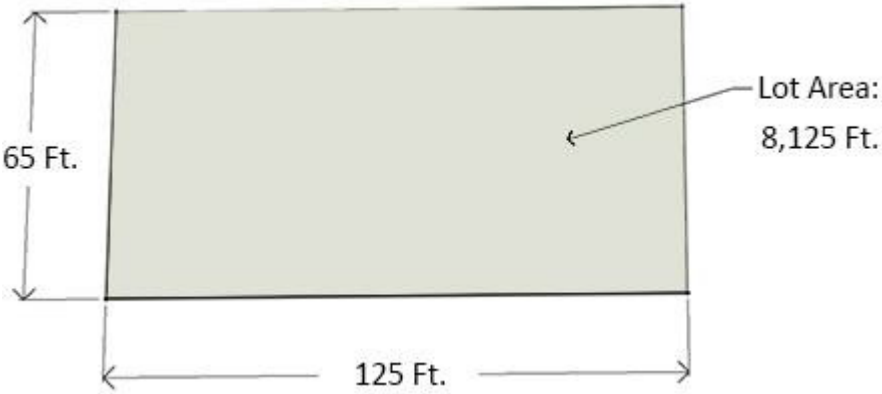
Measurement	Methodology	Illustration
Lot Coverage	The area of a parcel occupied by permanently anchored primary and/or accessory buildings, including in-ground pools, walkways, driveways, decks, and patios.	 $A / B = \text{Building Coverage (Percent)}$ STREET
Lot Area	The total horizontal area included within property lines.	 65 Ft. 125 Ft. Lot Area: 8,125 Ft.

Table 2.05.01-1, *Measurements*

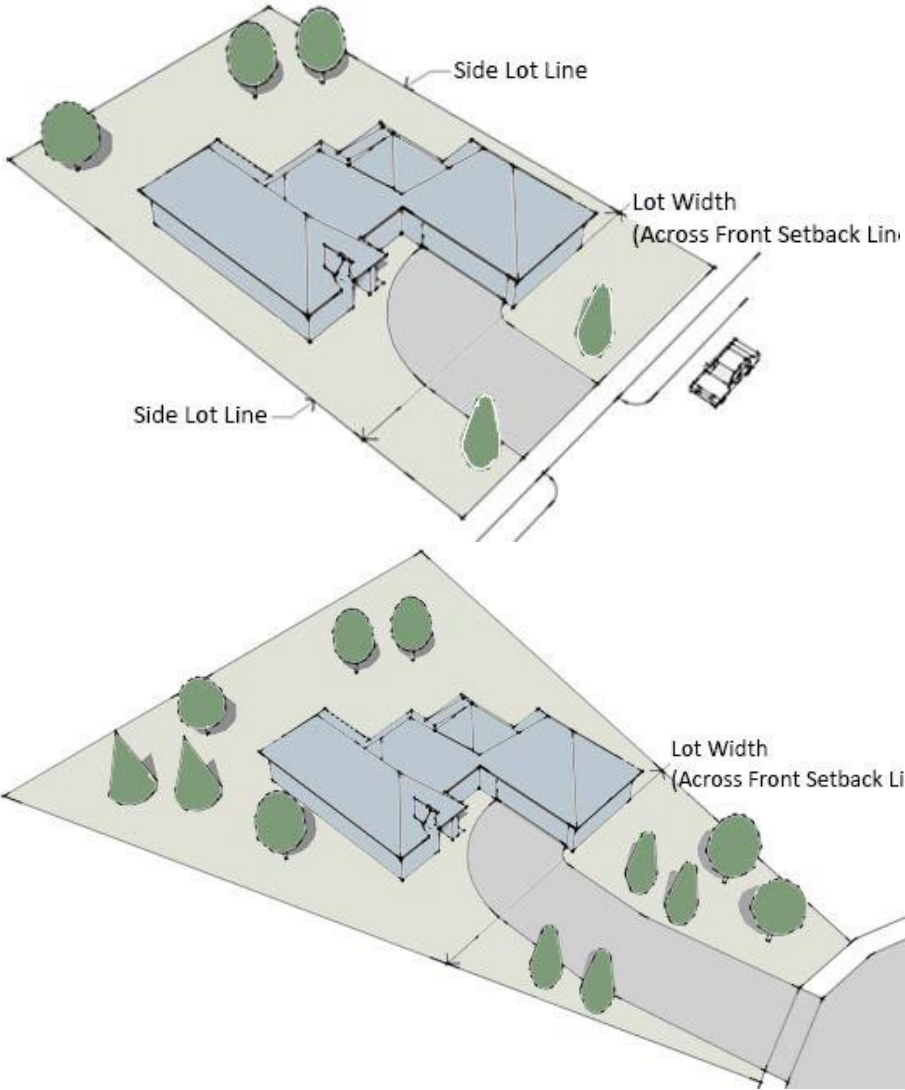
Measurement	Methodology	Illustration
Lot Width	For an interior parcel, the horizontal distance between the side property lines, measured at the required front setback line. For a cul-de-sac parcel, the horizontal distance between the side property lines measured at the front setback line.	 The illustration consists of two 3D perspective diagrams of a property lot. The top diagram shows an interior parcel with a building and a curved driveway. The bottom diagram shows a cul-de-sac parcel with a building and a curved driveway. Both diagrams show the horizontal distance between the side property lines at the front setback line. Side Lot Line Side Lot Line Lot Width (Across Front Setback Line) Lot Width (Across Front Setback Line)

Table 2.05.01-1, Measurements

Measurement	Methodology	Illustration
Setback	The horizontal distance of a required open space at grade between the outer wall of a building or structure and the adjoining property lines, unoccupied and unobstructed by any portion of a structure from the ground upward. The front and side setback lines span the entire width of the property. The interior side and exterior side setback lines extend from the required front setback line to the required rear setback line.	

2.05.02 Specific Allowances

- A. **Setbacks.** The following features may encroach into a required building setback:
1. *Outdoor Seating.* Outdoor seating associated with a Restaurant use may project a maximum of five feet into a required front setback, provided the space is at grade and is separated from the right-of-way by landscaping or a vertical barrier;
 2. *Bay Windows or Other Structural Overhangs.* Bay windows or other structural overhangs, not to exceed three feet, are permitted to encroach into the setbacks provided they do not violate a section of the adopted building code are permitted;
 3. *Chimneys.* Chimneys, not to exceed two feet;
 4. *Heating and Cooling.* Heating and cooling units, not to exceed three feet;
 5. *Architectural Features.* Overhanging roof, eave, gutter, cornice, or other architectural feature and awnings, not to exceed two feet;

6. *Other Projections.* Decks, steps, uncovered porches, patios, and terraces (non-enclosed), not to exceed six feet;
7. *Fences and Walls.* Fences and Garden/Yard Walls; and
8. *Accessory Structures.* Any permitted accessory structure or use customarily incidental to the permitted primary use or building as long as it meets the required setbacks for accessory structures.
9. *Projections into Front Yards in Commercial and Industrial Districts.* In commercial and industrial districts open, unenclosed gasoline pump canopies, gasoline filling and related equipment and similar facilities may project into one—half (1/2) the front yard setback requirement for the district.
10. *Drop Boxes.* Drop boxes, including but not limited to those for a government, nonprofit, or private purpose, are permitted within the setback area except in the CBD.
11. *ADA and Life Safety.* If an ADA accessibility or life safety feature cannot meet this requirement due to the location of an existing structure or other impeding site feature on a residential lot, the setback requirement shall be waived to the extent necessary to accommodate the accessibility or life safety feature.

B. Height.

1. *Exceptions to Height Restrictions.* Zoning district height limits shall not apply to communication towers, belfries, cupolas, spires, domes, monuments, airway beacons, structures for essential services including hospitals, windmills, flagpoles, chimneys, or chimney flues. Height limits shall not apply to any bulkhead, elevator, water tank, or to any similar structure or necessary mechanical appurtenance extending above the roof of any building if such structure does not occupy more than 33 percent of the area of the roof. All structures shall meet the required North Carolina Building Code.
2. *Setback.* Where a multi-family, nonresidential, or mixed use building desires an increase in height, the building may be increased beyond the maximum permitted height if the setback is increased one foot for each one foot of height above the maximum permitted height.

CHAPTER 3: BUILDING AND SITE DESIGN

Contents:

§ 3.01 Applicability and Purposes

§ 3.02 Site Design

§ 3.03 Parking, Loading, Stacking, and Access

§ 3.04 Trees, Landscaping, and Buffering

§ 3.01 Applicability and Purposes

3.01.01 Applicability

- A. Generally.** The purpose of design standards are to acknowledge that development will occur in a manner that promotes, protects, and improves the general health, safety, and welfare of the people and conserves the character of the Town of Black Mountain. These protections are set out to ensure that the Town continues to provide a desirable environment for residences, recreation, education, culture, commerce, and industry. These protections are set out below. The standards of this chapter apply to new development, redevelopment, substantial improvement, and expansions of use, sites, and buildings, as shown on Table 3.01.01-1, *Building and Site Design Standards Applicability*.

- B. **Conformance with Town Plans and Policies.** All development within the Town of Black Mountain be done in conformance with Town Plans and Policies including but not limited to the Elevate Black Mountain Comprehensive Plan.
- C. **Timing of Compliance.** The Town will not issue a Certificate of Occupancy until all site improvements required in this Ordinance are constructed in conformance with the approved permit or plan.

Table 3.01.01-1 Building and Site Design Standards Applicability				
Type of Development	Sections of this Ordinance			
	Site Design	Parking, Loading, Stacking, and Access	Trees, Landscaping, and Buffering	Signs, Outdoor Lighting, and Public Art
	◆ = Section Applies			
New residential, nonresidential or mixed-use development or change in use from residential to nonresidential or mixed-use	◆	◆	◆	◆
Increase in apartment units or impervious surface by 50 percent or more	◆	◆	◆	◆
Increase in apartment units or impervious surface by 25 to 49 percent	◆	◆		
Change in use requiring 10 or more additional parking, loading, or stacking spaces		◆	◆	◆
Increase in apartment units or impervious surface by less than 25 percent	◆	◆	◆	◆
Change from a nonresidential or mixed-use to another nonresidential or mixed-use that increases peak hour trips by 25 percent or more or generates 100 vehicles trips or more (entering/existing combined) during either the adjacent road's peak hours(s) or the Development's peak hour(s), whichever is less		◆		◆
Construction of a new sign or structural modification of an existing sign				◆

3.01.02 Purposes

- A. **Site Design.** The purpose is to address the quality design of sites in order to:
 - 1. *Character.* Preserve and enhance a community character that conveys a positive, lasting impression on both residents and visitors;
 - 2. *Functionality.* Provide buildings that are functional, safe, and attractive;
 - 3. *Public Realm.* Establish the physical and functional relationships between buildings and the public realm; and
 - 4. *Form.* Prescribe the rules related to building massing, form, and design.
- B. **Parking, Loading, Stacking and Access.** The purpose is to:
 - 1. *Adequate Space.* Ensure that adequate vehicle use areas are provided for new land uses and major alterations to existing uses;
 - 2. *Environmental Impacts.* Minimize the negative environmental and urban design impacts that can result from excessive parking, driveways, and drive aisles within parking lots;
 - 3. *Bicycle Parking.* Ensure that adequate off-street bicycle parking facilities are provided and promote parking that offers safe and attractive pedestrian routes;
 - 4. *Design.* Establish standards and regulations for safe and well-designed vehicle use areas that minimize conflicts between pedestrians and vehicles within parking lots and surrounding land uses; and
 - 5. *Reductions and Credits.* Offer flexible means of minimizing the amount of area devoted to vehicle parking by allowing reductions in the number of required spaces in context-sensitive locations.
- C. **Trees, Landscaping, and Buffering.** The purpose is to provide standards that will protect the health, safety and general welfare of the public, enhance property values, improve the appearance of the community, and preserve natural resources, trees, and native plants. Planting yard regulations are established to minimize potential conflicts between abutting developments, enhance the appearance of buildings and parking lots, and create a unified and attractive streetscape. These requirements will be applied to all new development, redevelopment or building expansion projects including streetscaping of rights-of-ways.
- D. **Signs.** The purpose is to:
 - 1. *Constitution.* Encourage the effective use of signs as a means of communication in the Town while preserving the rights of free speech under the First Amendment to the United States Constitution;
 - 2. *Economic Development.* Maintain and enhance the aesthetic environment and the Town's ability to attract sources of economic development and growth;
 - 3. *Safety.* Improve pedestrian and traffic safety;
 - 4. *Adverse Effects.* Minimize the possible adverse effect of signs on nearby public and private property; and
 - 5. *Enforcement.* Enable the fair and consistent enforcement of these sign restrictions.
- E. **Outdoor Lighting.** The purpose is to provide direction in controlling light spillage and glare so as not to adversely affect motorists, pedestrians, and land uses of adjacent properties. Lighting intensities should be controlled and assure that excessive light spillage and glare are not directed at adjacent properties, neighboring areas, and motorists.

§ 3.02 Site Design

3.02.01 General Provisions

A. **Generally.**

1. *Applicability.* Unless otherwise specified, the general provisions of this Subsection shall apply to all multi-family, single-family attached, nonresidential, mixed use, downtown, and industrial buildings.
2. *Zero Lot Line.* The general provisions of this Subsection do not apply to zero lot line houses. Refer to [3.02.02](#) for applicable standards for these building types.

B. **Amenity Area.** Projects containing groups of buildings to be devoted primarily to office and/or retail activities shall incorporate amenity areas into the site design. Amenity areas include, but are not limited to, public plazas, promenades, water features, clock towers, courtyards, squares or small parks on the site. Design elements to be included in the amenity areas are seating walls, benches, outdoor dining/gathering areas, decorative fountains or water features, clock towers and/or garden areas. Since the purpose of these amenity areas is to serve as pocket recreational areas and to help foster a sense of community, additional elements shall be considered if the applicant demonstrates to the Director that the design meets the intent of this Section.

C. **Mechanical Equipment.** All rooftop mechanical and electrical equipment shall be completely screened from view from all public streets and adjacent properties. All screening walls/parapets shall be constructed and designed of materials compatible to that of the primary structure and shall be incorporated into the design of the structure. Metal screening walls shall not be permitted. Appurtenances such as heating and air conditioning equipment, coolers, etc. shall be screened entirely from public view and shall be designed and finished to match adjacent building materials. In addition to design elements, landscape materials shall be incorporated to provide additional screening and/or softening of equipment areas.

D. **Outdoor Storage and Dumpsters.**

1. *Outdoor Storage.* Any outdoor storage area adjoining residentially zoned property shall be completely screened from the adjoining residentially zoned property using a screening device.
2. *Dumpsters.* Dumpsters are allowed in all districts in accordance with the following standards:
 - a. All dumpsters must be maintained in good working condition and their exterior shall be kept clean, free of debris, accumulations or effluent.
 - b. No dumpster shall contain hazardous material unless it is designed to contain such material or is lined, and that such containment is approved by the environmental protection agency.
 - c. Dumpsters which contain oil and grease shall not leak.
 - d. Dumpsters must be screened from the public right-of-way and from abutting residential property boundaries. Screening shall be with an opaque wall or fence that is at least one foot higher than the dumpster itself. Vegetative buffers of evergreen of sufficient height and density to meet the opaque screening requirement and which are a minimum of ten feet in width, may be permitted in lieu of a structural screen upon approval of the Director.
 - e. Screening provided to meet town requirements must be maintained in good condition and on a continuous basis.

3.02.02 Zero Lot Line

A. **Purpose.** The purpose of this Section is to provide reasonable design standards for detached single family dwelling development with zero lot lines, where permitted. In a zero lot line development, houses are shifted to one side of the lot. This provides for greater usable yard space on each lot. These developments require that planning for all of the house locations are done at the same time. Because the exact location of each house is predetermined, greater flexibility in site development standards are possible while assuring that the single-family detached character of a neighborhood is maintained.

B. Easements.

1. *Eaves.* The eaves on the side of a zero lot line house may not encroach on the property line of the adjacent property. During construction, the entire structure should be maintained within the property line.
2. *Maintenance Easement.* An easement to allow for maintenance or repair is required when the eaves or side wall of a zero lot line house are within four feet of the adjacent property line, as depicted in Figure 3.02.02, Maintenance Easement. The easement on the adjacent property shall provide at least five feet of unobstructed space between the furthestmost projection of the zero lot line house and the further edge of the easement.

Figure 3.02.02, Maintenance Easement

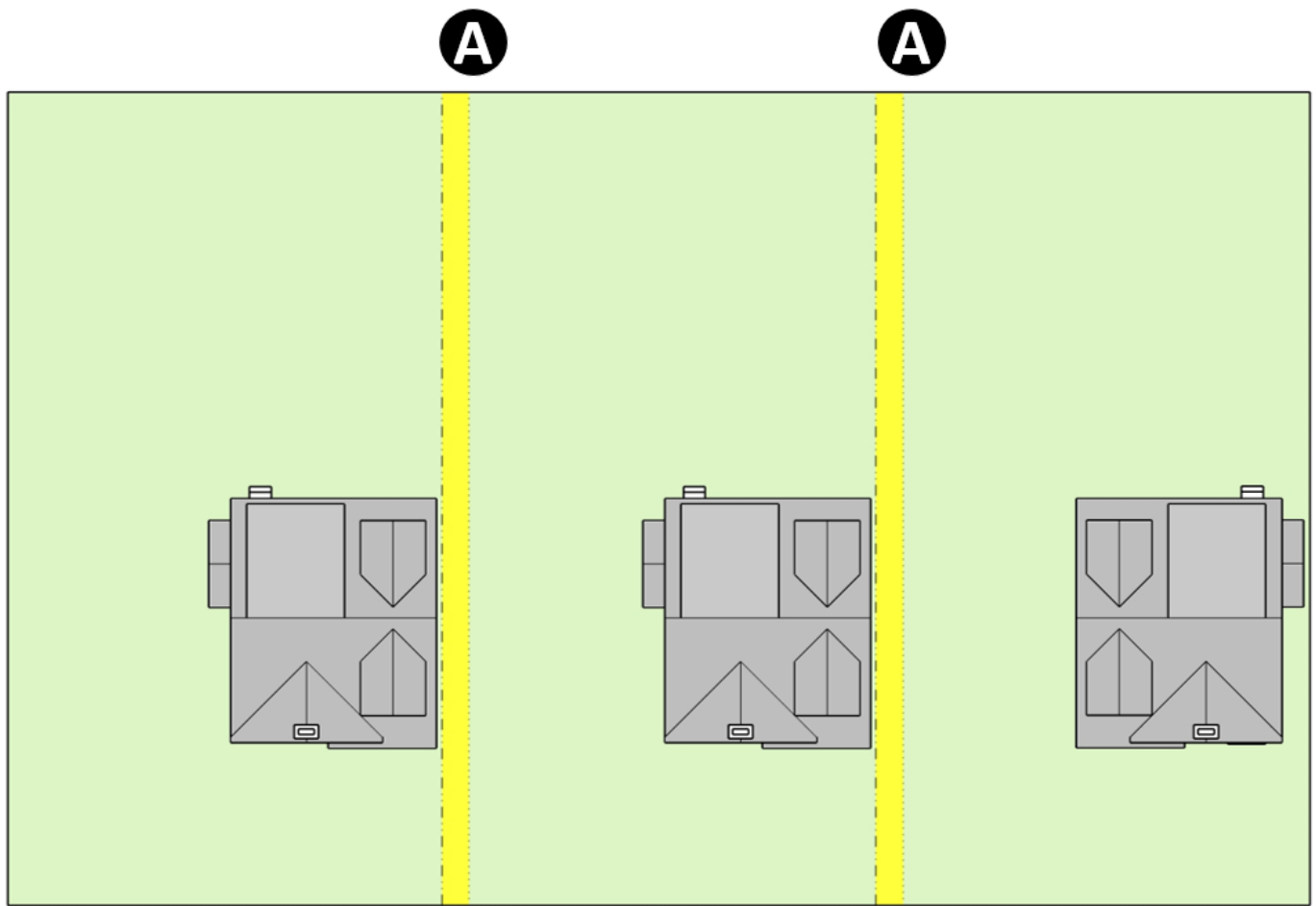


FIGURE NOTES:

A = Maintenance easement on property adjacent to zero lot line house, even if the adjacent property itself is not zero lot line.

- C. **Privacy.** If the side wall of the zero lot line house is within three feet of the property line, windows or other openings that allow for visibility into the side yard of the adjacent lot are not permitted. Windows that do not allow visibility into the side yard of the adjacent lot, such as a clerestory window or a translucent window, are permitted.
- D. **Building Separations.** In no case shall the reduced setbacks result in a distance of less than 10 feet between principal residential structures.

- E. **Subdivision Plat Notes.** The reduced setbacks and easements required in this Subsection shall be pre-determined and shall be clearly denoted on the plat.

3.02.03 Manufactured Homes

- A. **Purpose.** Because manufactured homes are built in the controlled environment of a manufacturing plant, are transported in one or more sections on a permanent chassis, and are built to the "HUD Code" which is a different standard than a modular or stick-built home, these guidelines are established locally to ensure that manufactured homes will meet certain specifications that protect the health safety and welfare of residents and to protect land values of adjacent properties.
- B. **General Provisions.**
1. *Temporary Use.* The Director shall permit the temporary use of manufactured homes, park model homes, or recreational vehicles on individual lots under the following circumstances:
 - a. *Natural Disaster.* When fire, flood, or other natural catastrophe makes an existing single-family dwelling uninhabitable, as an alternative and temporary residence used on the same lot for a period not to exceed six months.
 - b. *Single-Family Construction.* During the active construction period of any single-family dwelling, as a temporary residence on the same lot by the owner of the lot for a period not to exceed 24 months or the active construction period, whichever is less.
 - c. *Manufactured Home Construction.* During the active period of construction/installation of a manufactured home, as a temporary residence on the same lot for a period not to exceed six months or the active construction period, whichever is less..
 - d. *Subdivision Construction.* During the active promotion of any residential subdivision or planned unit development, the zoning administrator may permit a manufactured home within the development to be used solely for the purpose of a temporary sales office for a period of up to 12 months. The manufactured home may not serve as a residence.
 - e. *Model Home.* As part of a manufactured housing or "park home" sales or manufacturing business.
 2. *Principal Use.* Manufactured homes used as residences on individual lots shall be considered principal uses for the purposes of the land use code and shall conform to the requirements of the district in which it is located.
 3. *Single-Wide Use.* Single-wide manufactured homes are permitted only if located within a manufactured home park as part of an approved special use permit or pre-existing park, or as a primary residence on a single-family lot, provided that the guidelines provided below are met.
 4. *All Homes.* Manufactured homes shall adhere to the following guidelines:
 - a. Replacement units of existing manufactured housing must be of a newer model than the manufactured home it is replacing and must comply with the HUD Home Construction and Safety Standards.
 - b. The home must be a doublewide manufactured home or, if a singlewide, must be at least 16 feet in width and not exceed a length to width ratio of three to one (3:1).
 - c. The home shall have wheels, axles, transporting lights and towing apparatus removed within 15 days of placement.
 - d. The home must be placed on a permanent foundation or utilize skirting and underpinning that is constructed of materials that meet all existing requirements for manufactured homes as set forth in the state building code. All materials must be approved by the building inspector prior to installation.
 - e. The unit must have a shingled roof with a minimum pitch of one to three (1:3) and an overhang.

- f. The exterior materials shall be of a color, material, and scale comparable with those existing in residential construction and in no case shall the degree of reflectivity of exterior finishes exceed that of gloss white paint. Siding, trim, and features should be compatible with adjoining properties.
- g. The front door of the unit must face the street on which it is located if the shape of the lot allows.
- h. The unit must have a wooden, brick or concrete stoop or decking of at least nine square feet in addition to steps as needed on any exterior door.
- i. The unit must be replaced in such a way as to conform to district setbacks and yard requirements to the greatest extent possible.
- j. The unit must connect to water and sewer services or have an approved septic system in place.

Ref -- SECTION 5.7 MANUFACTURED HOMES ON INDIVIDUAL LOTS

5.7.1 Purpose.

5.7.2 General provisions.

A. The zoning administrator shall permit the temporary use of manufactured homes, park model homes or recreational vehicles on individual lots under the following circumstances:

- 1. When fire, flood, or other natural catastrophe makes an existing single-family dwelling uninhabitable, as an alternative and temporary residence used on the same lot for a period not to exceed six months.
- 2. During the active construction period of any single-family dwelling, as a temporary residence on the same lot by the owner of the lot for a period not to exceed 24 months or the active construction period, whichever is less.
- 3. During the active period of construction/installation of a manufactured home, as a temporary residence on the same lot for a period not to exceed six months or the active construction period, whichever is less..
- 4. During the active promotion of any residential subdivision or planned unit development, the zoning administrator may permit a manufactured home within the development to be used solely for the purpose of a temporary sales office for a period of up to 12 months. The manufactured home may not serve as a residence.
- 5. As part of a manufactured housing or "park home" sales or manufacturing business.

B. Manufactured homes used as residences on individual lots shall be considered principal uses for the purposes of the land use code and shall conform to the requirements of the district in which it is located.

C. Singlewide manufactured homes are permitted only if located within a manufactured home park as part of an approved special use permit or pre-existing park, or as a primary residence on a single-family lot, provided that the guidelines provided in subparagraph G [D] of this section are met

D. Manufactured homes shall adhere to the following guidelines:

- 1. Replacement units of existing manufactured housing must be of a newer model than the manufactured home it is replacing and must comply with the HUD Home Construction and Safety Standards.
- 2. The home must be a doublewide manufactured home or, if a singlewide, must be at least 16 feet in width and not exceed a length to width ratio of three to one (3:1).

3. The home shall have wheels, axles, transporting lights and towing apparatus removed within 15 days of placement.
4. The home must be placed on a permanent foundation or utilize skirting and underpinning that is constructed of materials that meet all existing requirements for manufactured homes as set forth in the state building code. All materials must be approved by the building inspector prior to installation.
5. The unit must have a shingled roof with a minimum pitch of one to three (1:3) and an overhang.
6. The exterior materials shall be of a color, material, and scale comparable with those existing in residential construction and in no case shall the degree of reflectivity of exterior finishes exceed that of gloss white paint. Siding, trim, and features should be compatible with adjoining properties.
7. The front door of the unit must face the street on which it is located if the shape of the lot allows.
8. The unit must have a wooden, brick or concrete stoop or decking of at least nine square feet in addition to steps as needed on any exterior door.
9. The unit must be replaced in such a way as to conform to district setbacks and yard requirements to the greatest extent possible.
10. The unit must connect to water and sewer services or have an approved septic system in place.

§ 3.04 Trees, Landscaping, and Buffering

3.04.01 Purpose and Applicability

- A. **Purpose.** The Town of Black Mountain desires to preserve existing trees and vegetation. The purpose of this section is to improve the appearance, quality and quantity of landscaping, tree conservation and preservation, and buffering in Black Mountain and to regulate the protection, installation, and long-term management of these and to minimize potential nuisances, such as visual impacts, noise, dust, odor, litter, and glare of lights, from adjacent properties. **It is also to identify and bring awareness to urban heritage trees.** The appropriate use of existing and supplemental landscaping enhances the appearance of the built environment and blends new development with our natural, mountain landscape. Existing vegetation should be retained where possible to ensure cohesive landscaping. This chapter is also provided in order to:
1. Provide visual buffering and to enhance the beautification of the town;
 2. Safeguard and enhance property values and to protect public and private investment;
 3. Preserve, protect, and restore the unique identity and environment of the Town of Black Mountain and to preserve the economic base for tourism and visitors to the town;
 4. Encourage the preservation of existing trees and vegetation;
 5. Aid in stabilizing the environment by contributing to the process of air purification, ground water recharge, and stormwater runoff retardation, while at the same time aiding in noise, glare, and heat reduction;

6. ~~Conserve energy~~To cool the urban environment, provide shade to parking and buildings, and to conserve energy; and
 7. Protect the public health, safety and general welfare of the town.
- B. **Where Required.** All new development ~~applicationss~~ shall be designed in accordance with the requirements of this section. A change of use or expansion of an existing building or parking area also requires compliance with the requirements of this chapter, except when resealing or re-striping a parking lot, which does not entail paving, resurfacing, or replacement of the asphalt, concrete, or other surface paving material. Where necessary to accommodate creativity in site design, or where conformance with the strict requirements of this chapter are not feasible, the Board of Adjustment may modify these requirements through a variance procedure or as part of a special use permit request, provided that the type and amount of landscaping or other features are equivalent in effectiveness.
- C. **Exemptions.** No section of this chapter applies to one- and two-family dwellings.
- D. **Plan Required.** Any plan required by this section shall accompany a request for a building permit or plat approval by the Town of Black Mountain or be part of a development with an approved plan. No building permit shall be issued, nor plat approved until the plan is approved by the Director. The Director may request any additional information needed to determine compliance with this section.
- E. **Approved with Stormwater Plan.** Landscaping requirements may be met as part of an approved stormwater plan and as incorporated into stormwater management practices such as planted swales or rain gardens.

3.04.02 General Provisions

- A. **Clear Cutting of Trees ~~and Other Vegetation~~ Shrubs, or Other Required Plantings.** The removal or clear cutting of trees ~~and other existing vegetation~~shrubs, or other required plantings on undeveloped or underdeveloped sites within the corporate limits is prohibited except as otherwise permitted in this section. Any clear cutting of trees, shrubs, or other required plantings vegetation removal on vacant, undeveloped, or underdeveloped sites shall be done in accordance with an approved site and/or subdivision plan. Any property that has trees, shrubs or other required plantings vegetation removed prior to a request for an approved site and/or subdivision plan may receive a stop work order and shall be required to wait a minimum of two years one year before submitting an application for any development approvals. This provision shall not apply to any property that is being managed in accordance with an approved Forestry Management Plan through the North Carolina Forestry Service, and any such plan shall be submitted as part of the development plan request.
- B. **Plan Requirements.** Plans required under this section shall show the following:
1. *Existing Vegetation Used to Satisfy Requirements.* Plans should identify those areas of vegetation, including heritage trees and significant vegetation, before site and/or subdivision plans are so far advanced that it is unreasonable and impractical to modify the plans to protect the vegetation identified to be saved on the plan. Existing vegetation or trees that will be used to satisfy landscaping requirements may include:
 - a. Vegetation/trees to remain and to be installed shall be shown on the landscape plan;
 - b. Show existing vegetation/trees and label existing vegetation/trees to be removed on the grading plan;
 - c. Tree protection fencing, including groups of trees and individual trees standing apart from any woods. Standards for tree protection are found below under **Tree Protection During Construction**;
 - d. Tree survey data for groups of individual and freestanding trees, including survey data of the initial ten interior feet of buffer edge abutting construction area; and,
 - e. Limits of preservation for significant existing vegetation.

2. *Other Existing Vegetation.* Location, name, and size of all existing trees, shrubs, groundcover and other plant materials that are to be incorporated as part of the landscape plan, but will not count toward requirements.
3. *New Proposed Plantings.* Proposed plantings that will be used to satisfy requirements, including:
 - a. Plant schedule, in chart form, to include scientific and common name, size at time of installation, method of containment (container size, etc.), quantity, and comments;
 - b. Symbols designating type, size, and location, with center of each tree noted (shrubs and groundcover can be shown as a mass);
 - c. Landscape beds and architectural planting surrounding existing and/or proposed structures on the site; and,
 - d. Any planting within designated bufferyard areas that is required to satisfy ordinance requirements, with widths dimensioned.
4. *Utilities and Rights-of-Way.* Existing and Proposed Utility Easements, Rights-of-way, and Electrical Lines:
 - a. Easements for underground utilities shall be combined with driveways and internal roads wherever possible to minimize the disturbance of preserved areas of native vegetation;
 - b. Adequate in size to include room for trench wall sloping or benching, equipment access, and deposition of soil;
 - c. Associated clearing area for installation and/or relocation; and
 - d. Associated Grading Areas for road widening.
 - e. All developments shall ensure that proper height under powerlines is met with appropriate tree species.
5. *Hardscape.* Hardscape Items (such as sidewalks, plazas, benches, fountains, trash cans, light poles, etc.). If more detail is needed, submit a separate hardscape plan.
6. *Bufferyards.* When required, location and width of landscaped bufferyards, including height of berms if required.
7. *Scale and Labeling.* Planting areas drawn to scale with a list of the botanical and common names, number, and size of all plants designated for each area.
8. *Maintenance.* A statement that maintenance will be performed in accordance with the requirements of this section.
9. *Irrigation.* If irrigation is used, it shall be noted.

C. Plant Materials Standards.

1. *Generally.* All plants shall be of the type and species appropriate for the climate and location being planted. All plant material shall be commercially produced and meet the minimum standards recognized by landscape professionals. In order to reduce the threat and impact of plant disease, multiple plant types and species shall be utilized on each site. Suggested plant lists are on file with the Town of Black Mountain.
2. *Timing.* All planting materials specified by the landscape plan shall be installed prior to the issuance of the Certificate of Occupancy. An exception may be granted for a period not to exceed 180 days for the following circumstances, as determined by the Director:
 - a. The unavailability of specified plant material;
 - b. Weather conditions that prohibit the completion of the project or jeopardize the health of the plant material;
 - c. Actions or directives issued by any governing body with jurisdictional authority.

- d. In such circumstances, the property owner or developer shall submit documentation of the estimated cost for the purchase and installation of the required planting areas and may be required to post a performance guarantee equal to the amount of the contract. The Director may issue a Conditional Certificate of Occupancy but shall not issue a Final Certificate of Occupancy until the planting requirements have been completed and approved.
3. *Prohibited.* Invasive non-native species listed by the North Carolina Invasive Plant Council as inappropriate for the region are prohibited plant materials.
4. *Size.* All required plants shall meet the size and variety requirements in *Table 3.04.02, Minimum Plant Sizes and Varieties*.

Table 3.04.02 <i>Minimum Plant Sizes and Varieties</i>		
Plant Type	Minimum Size or Varieties	Minimum Height
Shade Trees	2.0-inch caliper	10 feet
Ornamental Trees	1.5-inch caliper	6 feet
Evergreen Tree	NA	6 feet
Shrubs	3-gallon container	3 1/2 feet

E. Plant Locations. All plantings shall comply with the following:

1. *Public Right-of-Way.* A permit shall be obtained prior to planting any street tree or landscape material in the public right-of-way, this includes required streetscape plantings. In the event that the property line runs to the centerline of the street where there is no right-of-way, plantings shall observe a sight triangle as described below under *Edge of Curb*.
2. *Sight Triangle.* No landscaping may be planted in violation of the visibility triangle established in Section X, *Measurements*. Corner lots, and in situations where driveways and alleys intersect with street rights-of-way, shall be kept free of landscaping and plant materials that interfere with the vision of a motorist or pedestrian.
3. *Edge of Curb.* In the event that the property line is the centerline of the road with no public right of way, a minimum planting setback equal to an applicable site triangle as described above shall apply.
4. *Easements.* Shade trees shall not be placed within any public utility easement or under utility lines. The presence of overhead power lines requires street yard trees to be ornamental trees as depicted in Figure 3.04.02,
5. *Ornamental Tree Substitution Under Power Lines.* Larger shade tree varieties are encouraged where overhead power lines are not present.
6. *Fire Safety.* Landscaping shall meet minimum clearances from all fire hydrants and building sprinkler systems as required by the most recent version of the North Carolina Fire Code.
7. *Spacing.* In general, all plants shall be sited and spaced in a manner to allow for appropriate growth to mature size.

<i>Ornamental Tree Substitution Under Power Lines</i>
FIGURE NOTES: A = Ornamental Tree; B = Shade Tree; C = Public Utility Easement / Utility Line

- F. **Plant Substitutions.** The following substitution of tree planting requirements may be made:
1. One shade tree may be substituted in place of 10 required shrubs.
 2. One ornamental tree may be substituted in place of five required shrubs.
 3. One shade tree may be substituted in place of two required ornamental trees. Ornamental trees may not be substituted for required shade trees.
 4. Three ornamental grasses may be substituted for one required shrub.

3.04.03 Tree Preservation

- A. **Tree Clearing Permit.** Pursuant to NCGS §160D, prior to the commencement of any ~~vegetation~~tree, shrub, or other required planting clearing or removal on any undeveloped property, the owner (or authorized agent) of such property must obtain a Tree Clearing Permit from the Town of Black Mountain.
- B. **Canopy Coverage.**
1. *Tree Canopy Coverage Requirement.* All parcels, except for those provided for in exemptions under Purpose and Applicability, in the Town of Black Mountain shall maintain a minimum tree canopy coverage as shown in Figure 3.04.03-1, *Canopy Coverage*, below.
 2. *Priority Tree Protection Areas.* The minimum canopy coverage requirement may be met through the retention of existing vegetation, supplemental plantings, or a combination of both; however, every reasonable effort should be made to meet the baseline canopy coverage area through the retention of existing vegetation in the following priority areas of the site:
 - a. Required buffer yards between conflicting uses (as defined in this chapter);
 - b. Thoroughfare buffers and streetyards;
 - c. Conservation easements;
 - d. Special Flood Hazard Areas;
 - e. Historic or Specimen Trees.

Table 3.04.03-1, Canopy Coverage	
District	Canopy Coverage Requirement
CR-1, SR-2	2 canopy trees per 5,000 sq ft of parcel area, or 1 canopy tree and 1 understory tree per 4,000 sq ft of parcel area
TR-4, UR-8, NMU-8, OI-6, CB	1 canopy tree per 10,000 sq ft of parcel area
HB-8, LI-8, HI-0	1 canopy tree per 10,000 sq ft of parcel area

- C. **Tree Preservation.**
1. ~~Credits~~Incentives For Tree Preservation. ~~Credit~~Incentives may be applied toward the baseline tree canopy requirements by the preservation of existing trees in Priority Tree Protection Areas as well as other additional tree preservation areas on site. ~~Credit~~Incentives will only be applied to existing vegetation that is healthy and meets the requirements of this section. Tree ~~credit~~incentive rates for each tree preserved shall be determined by the following methods, schedules, and standards:
 - a. ~~Credit~~Incentives for Preservation of Wooded Areas. In order to receive ~~credit~~incentives for wooded areas, the trees contained in these areas shall be a mixture of healthy and useful canopy and understory trees. The method for calculating tree ~~credits~~incentives in wooded areas is as follows: one tree per 700 square feet of protected area. Watercourse buffer areas and wetlands are not

eligible for the tree ~~credit~~ **credits incentives** and the respective amount of parcel area is exempt from the baseline tree coverage requirement.

- b. Credit for Preservation of Historic or Specimen Trees.

Table 3.04.03-2, Credit for Preservation	
Existing DBH of Preserved Tree(s)	Number/Type (Canopy or Understory) of Tree Credits
8"+ (Understory)	2/Understory
20"-30"	3/Canopy
31"-41"	4/Canopy
42"+	5/Canopy
DBH shall be rounded off to the nearest inch. Trees must be of Specimen quality.	

- c. All Other Trees. All other trees preserved will receive 1 tree credit with the exception of trees less than 2.5 inches DBH and trees with less than 10 years of remaining life, as determined by the Director.
- d. Invasive, Dead, and Unhealthy Trees.
 - i. No credit will be allowed for any invasive exotic tree, dead tree, any tree in poor health, or any tree subject to grade alterations.
 - ii. The death or unhealthy state of any tree(s) used for preservation credit, within 3 years of establishing the Tree Save Area (TSA), detailed below, shall require the property owner to plant new trees equal to the number of credited trees.
 - iii. If any tree(s) used for preservation credit is improperly protected or determined to be hazardous, the Director may require new trees be planted equal to the number of credit trees.
 - iv. The Director may require trees left outside preservations areas to be removed if improperly protected or determined to be hazardous.
- e. Land Dedication. Land that is dedicated to the town that is part of the property being developed may be used towards the tree preservation requirement, if the dedicated land contains trees that meet the requirements above.

D. **Tree Save Areas.** Trees survive the stress of construction best when they are left in stands or larger groupings. For that reason, ~~it is encouraged that, wherever possible,~~ the site ~~should~~ **shall** be designed and developed so that tree save areas (TSAs) are designated ~~in-ato~~ **single, or** contiguous units. In order to qualify for the purpose of meeting the requirements of this section, designated tree save areas must conform to the following standards:

2. *Prohibited Activities in Tree Save Areas.*

- a. Land Disturbance. There shall be no clearing, excavation, soil compaction or changes of the existing grade within the delineated tree save area or tree protection zones. Should the removal of underbrush vegetation take place, every effort should be made to minimize the disturbance.
- b. Storage of Equipment. The storage of construction or other vehicles and/or equipment, site construction materials, portable buildings, including portable toilets, or other heavy objects is prohibited within delineated tree save areas and tree protection zones.
- c. Encroachments. If during the course of construction, it does become necessary for activities to take place inside TSA or tree protection zones, then the Director shall be consulted, in advance of any activity. Such activities include but are not limited to the erection of scaffolding, vehicle movement,

trenching or excavation. The Director shall review the most appropriate way to undertake such activities. If such an encroachment is anticipated, the following preventive measures shall be employed at a minimum:

- i. Where utilities must encroach upon a delineated tree save area or tree protection zone, they should be installed by tunneling **or boring**, rather than by trenching. If it is necessary for roots to be disturbed, then proper root pruning procedures shall be employed.
 - ii. ~~The removal of trees adjacent to tree saved areas can cause inadvertent damage to the protected trees. Wherever possible, it is strongly recommended to cut minimum one and one-half foot trenches along the limits of land disturbance, so as to cut, rather than tear, roots.~~
 - iii. Where compaction might occur due to traffic or materials through the tree protection zone, the area must first be mulched **within 10 business days** with a minimum 6-inch layer of processed pine bark or coarse wood chips. Equipment or materials storage or disposal shall not be allowed within tree protection areas.
 - iv. Fences and walls may only be installed in tree save areas if:
 - (A) The root systems of existing trees shall be taken into consideration;
 - (B) Post holes and trenches close to trees shall be dug by hand and adjusted as necessary to avoid damage to major roots; and
 - (C) Continuous footers for masonry walls shall end at the point where major large roots are encountered and those roots are bridged.
3. *Minimum Dimensional Requirements.* The extent of the Critical Root Zone (CRZ) of the tree or trees at the outer edges of the tree save area shall constitute the limits of construction for the purposes of this sub-section. The CRZ is the circular area of ground surrounding a tree extending from the center of tree to the greater of
- a. 6 feet;
 - b. The dripline (furthest extent of tree canopy) of the tree, or
 - c. 1.5 feet per caliper inch DBH of the tree.
4. *Protective Fencing.* The CRZ shall be completely enclosed with a sturdy and visible fence that encircles the critical root zone of the trees or buffers to be preserved before grading begins according to the following:
- a. Where Required. Required fencing shall be installed around the CRZ. Fencing of areas adjacent to existing and proposed roadways is required if the preserved tree's critical root zone is within three feet of the public right-of-way. ~~Fencing is required on all Town and Department of Transportation road projects that are adjacent to protected streetscapes or buffers. The applicant and Administrator shall consider existing site conditions in determining the exact location of any tree protection fencing.~~
 - b. Type of Fence. All fencing required by this Section shall be **four feet orange polyethylene laminar fencing, or equivalent**; a minimum four feet high and of durable construction. Passive forms of tree protection may be utilized to delineate tree save areas that are remote from areas of land disturbance at the discretion of the Director.
 - c. Signs. Signs shall be installed on the tree protection fence visible on all sides of the fenced-in area (minimum one on each side and/or every 300 linear feet). The size of each sign shall be a minimum of two feet by two feet and shall contain the following language in English and Spanish: "TREE PROTECTION AREA, KEEP OUT."

- d. **Designation of Plan and Plats.** The tree protection fencing shall be clearly shown on the site and/or **subdivision development** plan. No construction, grading, equipment or material storage, or any other activity shall be allowed within the fenced area. Fencing shall be maintained until the final site inspection prior to the Certificate of Occupancy is scheduled (including any required perimeter buffer for single-family home construction). The fencing shall be removed after the final site inspection for the Certificate of Occupancy.
5. **Minimum Content Requirements.** The TSA should contain, as determined by an informal site assessment, predominantly canopy tree species which are at least 2 inches in diameter at breast height (DBH) and a minimum of 10 feet in height.
6. **Maintenance and Ownership.** When a TSA is established in association with the incentives as listed in this section, it should be designated, where possible, as a dedicated open space, or in a conservation easement.
7. **Tree Removal Inside Tree Save Areas.** Trees that are in poor health or invasive, exotic species, as determined by **an arboristthe Director**, may be removed from tree save areas. All tree removal within TSA must have **prior approval by the Director a permit** pursuant to the provisions of this section. However, in an emergency situation due to storm damage, or to alleviate an imminent hazard to the health, safety and welfare of the citizens, or to repair property damage, prior approval for tree removal in previously approved designated tree save areas is not required.
8. **Flexibility in Other Requirements.** Flexibility in other design requirements will be considered on a case-by-case basis **by the Zoning Board of Appeals** to accommodate the establishment of a TSA.
9. **Tree Save Area Incentives.** The following incentives are offered to encourage tree preservation in tree save areas.

Table 3.04.03-3, Tree Save Area Incentives	
Single-Family Residential or Two-Family Residential	
Establishment of TSA	Reduction of minimum lot area equal to area of TSA (up to 20% maximum reduction)
Establishment of TSA along a street	Reduction by up to 50% of required street tree plantings at the rate of one less street tree for every 200 square feet of TSA established
Establishment of a tree save area in or along a required bufferyard	Reduction by up to 50% of required bufferyard plantings at the rate of 5% less plantings for every 200 square feet of TSA established
All Other (Multifamily and Non-Residential)	
Establishment of a tree save area	Reduction by up to 20% of minimum parking requirement at the rate of one less parking space for each 200 square feet of TSA established
Establishment of a tree save area adjacent to a parking lot	Reduction by up to 50% of required parking lot plantings at the rate of one tree for each 200 square feet of TSA established

- E. **Historic or Specimen Trees.** It is the intent of this section to promote the preservation of trees which are of a significant enough size and/or of such a historic nature as to be an asset to the community as a whole.
 2. **Exemptions.** Non-residential lots that are less than two acres in size are exempt from the requirements set forth under this Section in relation to historic or specimen trees.
 3. **Specimen Trees.** Where there exists one or more Specimen Trees on property subject to the regulations of this section, **action shall be made every effort shall be made** to preserve and protect that tree or trees,

according to the protection standards as outlined in this section. For the purposes of this section, Specimen Trees shall be defined as those trees which meet one or more of the following:

- a. Any tree in fair or better condition which equals or exceeds the following diameter sizes or which otherwise is noteworthy because of species, age, size, or other exceptional quality, uniqueness and rarity:

Table 3.04.03-4, Specimen Trees	
Tree Type	Tree Diameter Size
Canopy	20 inch DBH
Understory	8 inch DBH (Reference ANSI Z60.1-2004 for multi-stem trees)

- b. A tree in fair or better condition must meet the following minimum standards:

- i. A life expectancy of greater than 10 years;
- ii. A relatively sound and solid trunk with no extensive decay or hollowness, and less than 20% radial trunk dieback;
- iii. No more than one major and several minor dead limbs;
- iv. No major insect or pathological problem.

4. *Historic Trees.* ~~Where there exists one or more designated Historic Trees on property subject to the regulations of this section, every effort shall be made to preserve and protect that tree or trees, according to the methods outlined in this section. For the purposes of this section, Historic Trees shall be defined as those trees which meet one or more of the following~~Where there exists one or more designated Historic Trees on property subject to the regulations of this section and upon petition by the owner of the property on which the tree(s) is located, every effort shall be made to preserve and protect that tree or trees, according to the methods outlined in this section. For the purposes of this section, Historic Trees shall be defined as those trees which meet one or more of the following:

- a. Designation: Upon petition by the owner of the property on which the tree(s) is located, and the recommendation of the Director, the Town of Black Mountain may designate a specific tree or group of trees as either a Landmark, Historic, or both. In order to be designated as such, the following criteria must be demonstrated by the owner:

- i. Landmark Trees.

- (A) Using the measurement and point system established for state and national champion trees, a nominated tree must have a point total of at least 50% of the current state champion for the particular species; or be a highly visible or recognizable tree or group of trees which has significance for the entire community; and,
- (B) Must exhibit such health, condition, and form as to have a reasonable prospect of continuing useful life.

- ii. Historic Trees.

- (A) Must be at least 50 years old and exhibit such health, condition, and form as to have a reasonable prospect of continuing useful life; and,
- (B) Must be associated with a specific and significant historic event or individual; or contribute to the character of a historic building or property.

5. *Replacement of Specimen Trees.*

- a. ~~When a specimen tree is removed from a site during construction, or dies within 2 years following construction, the applicant or developer shall replace such tree on the lot with an amount of trees and/or landscaping of equal value. Valuation of the tree removed or lost shall be determined by the Director in consultation with a person qualified by training or experience to have expert knowledge of the subject. Valuation of trees and vegetation shall be established in accordance with standards established by the Council of Tree and Landscape Appraisers (CTLA).~~

- a. When a specimen tree is removed from a site during construction, or dies within 2 years following construction, the applicant or developer shall replace such tree on the lot with a **similar native species** an amount of trees and/or landscaping of equal value. Valuation of the tree removed or lost shall be determined by the Director in consultation with a person qualified by training or experience to have expert knowledge of the subject. Valuation of trees and vegetation shall be established in accordance with standards established by the Council of Tree and Landscape Appraisers (CTLA).

- b. If replacement is not feasible or desired, as determined by the Director, a monetary sum equal to the value of the lost or removed specimen tree(s) may be paid to a tree planting fund maintained by the Town of Black Mountain for the purposes of planting and maintaining trees throughout the jurisdiction of the town

6. *Waivers for Emergencies.* During emergencies, such as windstorms, ice storms, fire, or other disasters, the Director may waive the requirements of this Section in order to avoid hampering private or public work to restore order in the Town. This Section shall not be used, however, to otherwise circumvent the requirements of this Section.

7. *Removal of Specimen Trees.* The Director shall review a request to remove a specimen tree and may approve removal if the tree is adversely impacted by one of the following and no practical alternative location exists:

- a. Required road connections,
- b. Required sanitary sewer or storm drain lines,
- c. Public infrastructure improvements made by others,
- d. Danger to planned structures,
- e. Required stormwater treatment devices located in geographically and topographically appropriate areas, or
- f. Town design standards that limit the location of buildings and/or other features such as parking and requirements for the building to front on streets.

8. *Alternatives for Replacement of Specimen Trees.*

- a. A development may meet the total inches required for mitigation by planting larger shade trees for the required buffers and/or landscaping. Any shade tree that is planted larger than the required minimum size may use the excess inches to count towards the Tree replacement requirements. This standard is only applicable for non-residential and mixed use developments.
- b. If the developer chooses to protect trees that could otherwise be removed, the inches protected may count towards the mitigation requirements for the removal of Specimen Trees. These areas that are to be protected are called "Tree Save Areas" and shall be protected as outlined above.

- F. **General Tree Replacement Standards.** Any tree, shrub, or required planting, or vegetation required as part of the development requirements of this ordinance that is damaged, removed, or excessively pruned shall be replaced according to the following standards:

2. *Square Inch for Square Inch Replacement.* Where the cross-sectional (basal area can be documented, an equal amount of new vegetation ("square inch for square inch") shall be used to quantify the required replacement vegetation. All replacement trees shall have a DBH of at least 2 inches each and a cumulative cross-sectional (basal) area equal to or greater than that of the original tree(s).
3. *Area Replacement.* For all other cases where existing vegetation is damaged or removed, the type and amount of replacement vegetation required shall be the type and amount that is necessary to provide the type of landscaped area required under this section and/or as required by the approved landscape plan.
4. ~~*Location of Replacement Vegetation.* Replacement vegetation should be located within the vicinity of the violation. If replacement is not practical within the vicinity, a more suitable location on the site may be selected. If no suitable location can be found, a monetary payment may be required. This monetary payment will be based on the current market price for any replacement tree(s) and/or shrubs. This payment shall be used to fund plantings on public properties.~~
5. *Location of Replacement Trees, Shrubs, or Other Required Plantings Vegetation.* Replacement **trees, shrubs, or other required plantings vegetation** should be located within the vicinity of the violation. If replacement is not practical within the vicinity, a more suitable location on the site may be selected. If no suitable location can be found, a monetary payment of **two hundred dollars (\$200.00)** may be required. **This monetary payment will be based on the current market price for any replacement tree(s) and/or shrubs.** This payment shall be used to fund plantings on public properties.^[JT1]
6. *Establishment Period.* Replacement trees shall be maintained through an establishment period of at least 2 years. The applicant may be required to post a performance guarantee acceptable to the town guaranteeing the survival and health of all replacement trees during the establishment period and guaranteeing any associated replacement costs. If the replacement trees do not satisfactorily survive the establishment period in the judgment of the ~~Administrator~~**Director**, the performance guarantee will be used to purchase and install new replacement trees.

3.04.04 Site and Parking Lot Landscaping

- A. **Generally.** As described in the *Purpose and Applicability*, site and parking lot landscaping is required for all uses other than individual infill single-family detached residential uses and duplexes.
- B. **Planting Location.** The planting areas described in this section are shown below in Figure 3.04.04-1, *Site Landscaping Areas*. As shown, plantings are not required in areas that are designed for direct vehicular access to the building, such as loading bays, service bays, and drive-through lanes on the side of the building with a service window, but shall be installed adjacent to the building foundation and between the parking and vehicular use areas and the property line under all other conditions.

Figure 3.04.04-1, Site Landscaping Areas

- C. **Protection of Planting Areas.** Planting areas shall be protected by wheel stops and six inch curbs. Curbs may be punctuated to allow for storm water flows into biological treatment areas, as applicable, pursuant to an approved drainage plan, provided that the punctuations do not interfere with their protective function.
- D. **Site Landscaping.** The required planting area shall be planted as follows:

1. *Front and Street Side.* One canopy tree shall be planted within the front and street side planting areas for each 30 linear feet measured parallel to the building, or portion thereof. A continuous row of shrubs shall be planted at intervals of not more than five feet between the primary shrub trunk or from the center of the root ball, as applicable, or the shrubs may be designed in groupings, if an equal or a greater number of plants are used. All remaining ground surface areas shall be in groundcover, which may include sod, ornamental grasses, mulch, or perennial or seasonal plantings. As approved by the Director, wet ponds with fountains, vegetated rain gardens, naturalized wetlands, and/or other gardens may be used in lieu of or together with the required shrubbery and groundcover. Sculptures, monuments, and other public art installations are encouraged.
2. *Side.* Trees shall be planted with a maximum spacing of eight feet between the primary tree trunk or from the center of the root ball, as applicable, which may also be designed in groupings if an equal or a greater number of trees are used. Shrubs shall be planted as set out in above. Ornamental grasses may be used to meet up to 25 percent of the shrubbery requirement. All remaining ground surface areas shall be in groundcover, which may include sod, ornamental grasses, mulch, or perennial or seasonal plantings.
3. *Rear.* A rear planting area that is adjacent to a drive-through lane or a parking lot with a parking lane width of 40 feet or more shall meet the requirements of a side. All other rear planting and ground surface areas shall be in groundcover, which may include sod, ornamental grasses, mulch, or perennial or seasonal plantings.

E. Parking Lot Landscaping.

1. *Generally.* Parking lot landscaping is required within and around parking lots that contain more than five parking spaces, excluding those for single- and two-family dwellings.
2. *Parking Lot Landscape Areas.* As illustrated below, landscaping is required in all of the following areas:
 - a. At the ends of parking aisles, planted in islands that are not less than nine feet wide and 36 feet long, with 10 foot curb radii on the side that faces outward from the parking aisle.
 - b. In the middle of parking rows at intervals required below, planted in interior islands that are not less than nine feet wide and 36 feet long, with five foot curb radii at both ends.
 - c. At the corners of parking lots, planted in corner islands, which is the area defined by the extension of the edges of intersecting parking modules.

Figure 3.04.04-2, Parking Lot Landscape Areas

3. *Planting Requirements.* Parking lot landscape islands shall be provided at an interval of one island for each 15 parking spaces, or fraction thereof, planted as follows:
 - a. Each interior and endcap island shall be planted with a minimum of:
 1. One canopy tree or two non-canopy trees; and
 2. Groundcover, which may be sod, ornamental grasses, or perennial or seasonal plantings, or shrubs planted at intervals of not more than five feet between the primary shrub trunk or from the center of the root ball, as applicable, with the remaining area in groundcover.
 - b. Each parking lot corner shall be planted with two canopy trees or five non-canopy trees.

3.04.05 Bufferyard Landscaping

- A. **Purpose.** The purpose of a bufferyard is to provide a transitional buffer between zoning districts and/or uses that may differ in development intensity and density, provide a minimum buffer between uses of similar intensity and density and provide land space buffer between back-to-back lots within a subdivision. These landscaped planting yards are intended to ensure that a natural area of appropriate size and density of plantings is planted or preserved between zoning districts and/or uses.
- B. **Exemptions.** Certain uses are exempt from the buffer requirements as described in this Section. Exemptions include, but are not limited to the following:
1. *Common Ownership.* Lot or parcels, under common ownership, on which the uses or buildings demonstrate compatible design elements and are linked to adjacent lots or buildings by a common system of sidewalks or other pedestrian walkways across property lines;
 2. *Separation by ROW.*
 - a. Lots or parcels separated by a public street right-of-way greater than 30 feet in width;
 - b. Lots or parcels separated by a railroad right-of-way.
- C. **Bufferyard Zoning/Land Use Classes.** There shall be five different classes of zoning districts and land uses for purposes of determining the bufferyard type required. Land use classes shall be based upon the specific land use or use category to be developed or the existing zoning district in the following groupings of zoning districts, land uses, and use categories.

Class 1

Conservation residential district (CR-1)

Suburban residential district (SR-2)

Single- and Two- Family Residential uses outside of these districts

Class 2

Town residential district (TR-4)

Urban Residential (UR-8)

Neighborhood mixed use district (NMU-8)

Group Living use category and Multifamily Residential uses outside of these districts

Class 3

Office and institutional district (OI-6)

Office use category and Institutional, and Civic uses outside of these districts

Class 4

Highway business district (HB-8)

Central business district (CB)

Retail Repair, Sales, and Service uses and Wholesale Trade use categories outside of these districts

Class 5

Light industrial district (LI-8)

Heavy industrial district (HI-0)

Light Industrial and Heavy Industrial use categories outside of these districts

Passenger Terminal, Warehousing and Storage, Waste Related Use, and Utilities use categories

D. Bufferyard Types and Standards.

1. *Generally.* Table 3.04.05-1, *Bufferyard Standards by Type*, outlines each of the four bufferyard types, including the required plantings and dimensions. Minimum dimensions shall apply, and be measured, horizontally.
2. *Measuring Width.* The width of the bufferyard and the density of plantings increase as the difference in the nature and intensity of development in adjacent land uses increases. Widths shall be measured from the property line, except where bufferyards are permitted to straddle property lines, as set forth in this Section.
3. *Measuring Length.* Where bufferyards turn at property corners, the length measurements determining plant quantities shall not be required to overlap.

Table 3.04.05-1
Bufferyard Standards by Type

Buffer Yard Type	Minimum Width	Min. Required Shade Trees (per 100 linear feet)	Min. Required Ornamental Trees (per 100 linear feet)	Trees Required to be Evergreen (per 100 linear feet)*	Min. Required Evergreen Shrubs (per 100 linear ft.)
A	8'	3	5	2	10
B	15'	5	10	4	20
C	20' or 15' w/ 6' high berm, fence or wall	10	20	15	30
D	50' or 25' w/ 6' high berm, fence, or wall	15	25'	20	40

TABLE NOTES:

*Evergreen trees shall be interspersed with other required plantings on a regular interval.

Figure 3.04.05-1
Bufferyard Type Illustrations

Bufferyard Type A

A = 100 feet; B = 8 feet

Bufferyard Type B

A = 100 feet; B = 15 feet

Bufferyard Type C

Without Fence or Wall

A = 100 feet; B = 20 feet

With Fence or Wall

A = 100 feet; B = 15 feet; C = 6 feet

Bufferyard Type D

Figure 3.04.05-1
Bufferyard Type Illustrations

Without Berm
A = 100 feet; B = 50 feet
With Berm
A = 100 feet; B = 25 feet; C = 6 feet

E. Required Bufferyard for Development.

1. *Development in All Other Districts.* Table 3.04.05-2, *Required Bufferyard for Development in All Other Districts*, identifies the bufferyard type required for proposed development in all districts, except the CB district.
2. *Development in CB District.* Table 3.04.05-3, *Required Bufferyard for Development in CB District*, identifies the bufferyard type required for proposed development in CB, Central Business District.

F. Interpretation of the Table. The rows indicate the Bufferyard Class, as outlined above, of the proposed development and the columns indicate the Bufferyard Class of existing adjacent development. N/A indicates no bufferyard is required.

Table 3.04.05-2
Required Bufferyard for Development in All Other Districts

Bufferyard Class of Proposed Development	Bufferyard Class of Adjacent Existing Development				
	Class 1	Class 2	Class 3	Class 4	Class 5
Class 1	A	N/A	N/A (B ²)	N/A (C ²)	N/A (D ²)
Class 2	A	A	B	C	D
Class 3	B ¹	B ¹	A	A	C
Class 4	C ¹	C ¹	B ¹	A	B
Class 5	D ¹	D ¹	C ¹	B ¹	B

TABLE NOTES:

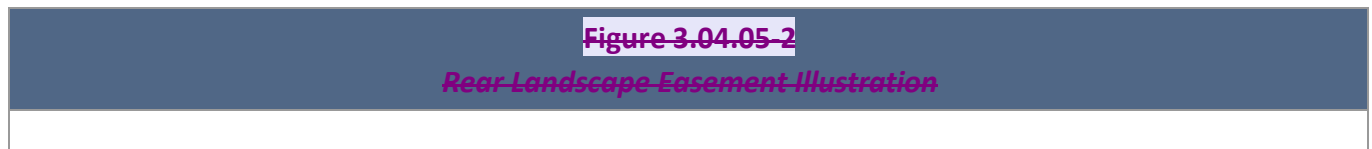
¹ Complete visual separation is required through the use of densely planted landscaping that would provide complete visual separation within three years of planting. See below for definition of "Visual Separation".

² New single-family subdivisions shall provide the required buffer yard, if they abut existing non-residential developments which were constructed before the adoption of this UDO and lack the required buffer yard. If an adjacent non-residential development includes the required buffer yard, none shall be required of the residential subdivision.

³ All approved development projects consisting of a primary structure/user and outparcels shall maintain that the primary user shall provide the buffer yards for all external boundaries. All outparcels shall be required to maintain a buffer yard between it and the primary user. The primary user is not responsible for an additional buffer yard between it and outparcels.

Table 3.04.05-3 Required Bufferyard for Development in CB District					
Bufferyard Class of Proposed Development	Bufferyard Class of Adjacent Existing Development				
	Class 1	Class 2	Class 3	Class 4	Class 5
Class 1	N/A	N/A	N/A (A ²)	N/A (B ²)	N/A (C ²)
Class 2	A	N/A	B	B	C
Class 3	A ¹	A ¹	N/A	A	B
Class 4	B ¹	B ¹	A ¹	N/A	A
Class 5	C ¹	C ¹	B ¹	A ¹	N/A
TABLE NOTES: Refer to table notes in <i>Required Bufferyard for Development in All Other Districts</i> .					

- G. **Back to Back Residential Lots.** Residential Subdivisions with back to back lots that share a common property line shall have a planted landscape buffer easement a minimum of eight feet in width, equally divided on each lot, as depicted in Figure 3.04.05, *Rear Landscape Easement Illustration*. Such buffer easement shall be deeded and recorded.



- H. **Subdivision Entries.** Subdivision entries in all districts shall have a divided entry with a landscaped median. The median shall be planted with the planting material required for a Type A buffer. If topography is determined to be a barrier to meeting this requirement, the Planning Board shall be authorized to approve an alternative method of compliance or grant a waiver from this requirement.
- I. **Subdivision Entries.** Subdivision entries in all districts shall have a divided entry with a landscaped median. The median shall be planted with the planting material required for a Type A buffer. If topography is determined to be a barrier to meeting this requirement, the **Board of Adjustment Planning Board** shall be authorized to approve a **variance an alternative method of compliance or grant a waiver** from this requirement.
- J. **Prohibited Uses and Structures.** The following are prohibited within bufferyards:
1. *Buildings and Equipment.* The construction of any structure or the placement of any mechanical equipment within the landscape buffer yard except for equipment necessary for the provision of utilities;
 2. *Signs.* Signs, other than subdivision entrance signs;
 3. *Recreational Uses.* Active recreational uses, such as playfields, swimming pools, racquetball and tennis courts, or other active, structured recreational uses; and
 4. *Vehicle Use Area.* Vehicle use areas, off-street parking areas, or circulation drives.
- K. **Permitted Uses.** The following other uses may be permitted in a bufferyard provided that none of the required plant material is eliminated, the intended screening is accomplished, the total width of the bufferyard is maintained, and all other requirements of this Section are met:

1. Passive recreation;
 2. Sculpture, outdoor furniture, picnic areas; pedestrian, bike or equestrian trails; golf courses,
 3. Stormwater retention basins;
 4. Parks and open space.
- L. **Reduction in Required Bufferyard.** Where a dedicated bufferyard exists on an abutting property, the Director may eliminate the buffer yard requirement for the property to be developed.
- M. **Existing Vegetation.** Existing healthy vegetation may be counted toward required landscaping. In order to do so, the landscape plan shall indicate the type, number and size of existing plants that are sufficient to comply with the respective bufferyard. It shall not be necessary to indicate the total inventory of existing plants. Only plants required to meet the provisions of this UDO shall be required to be listed.
- N. **Application Toward Setback Requirement.** Bufferyard areas shall be counted towards required building setbacks.
- O. **Designation of Bufferyard on Applications and Plats.** Bufferyards shall be designated as landscaped areas on the application for development approval and as landscape easements when shown on a subdivision plat. The buffer yard shall be recorded with the title of the property as a landscape buffer yard easement.
- P. **Bufferyard on Property Line.** When platting abutting lots, the applicant may dedicate a buffer yard that straddles the property line, provided the cumulative buffer width is maintained for both yards.
- Q. **Visual Separation.** Where complete visual separation is required, it shall be accomplished through the use of landscaping which provides year-round opaque screening. In addition, to provide complete visual separation within three years of planting, when and if needed, landscaping may be combined with earthen berms or masonry walls to accomplish the required visual separation.
- R. **Maintenance of Buffer.** It is the intent of the Town that all buffers will be maintained in their natural state and will not be excessively pruned or trimmed except as necessary to maintain compliance with all other Town regulations, such as those prohibiting obstruction of roadway sight distances or obstruction to the free use of public sidewalks or streets. Infectious, invasive, exotic, dead, and damaged trees shall be removed if no damage is done to other vegetation.

3.04.06 Alternative Compliance

- A. **Generally.** Under the criteria listed below, the Board of Adjustment, as appropriate, may review and approve an alternative compliance plan upon determining that such plan meets the following criteria.
- B. **Purpose.** The alternative compliance plan meets the purpose of this Section; and
- C. **Conditions.** Site conditions inhibit creative site design or pose prohibitive constraints to appropriate development as a result of strict compliance with the requirements set forth in this Section in a minimum of one of the following manners:
1. *Shape and Size.* The subject property is peculiarly-shaped, through no action of the owner or previous owner, or contains extensive undeveloped area;
 2. *Limitations.* The subject property has space limitations as a result of the locations of existing structures, paved areas, surrounding existing development, and other built feature; and
 3. *Features.* The subject property contains unique natural features such as soil characteristics, topography, geological characteristics, water features, and significant existing vegetation.
- D. **Financial Hardship.** Financial hardship is not justification for alternative compliance.

3.04.07 Installation and Maintenance

- A. **Generally.** All developments and projects shall provide for the care and maintenance of landscaping and trees within the landscape plan.
- B. **Maintenance Responsibility.** The owner of the lot or parcel or the manager or agent (which may be a mandatory property owners' association if such is provided in the association's governing documents), shall be responsible for the maintenance of all landscape areas and their plant materials, including abutting landscaped portions of public rights-of-way.
- C. **Irrigation.** If landscaped areas are irrigated, they shall meet the following requirements:
1. *Irrigation systems.* They shall be designed to avoid sprinkling and unnecessary runoff onto paved areas, including parking, loading, and street pavement areas. ~~Prevailing winds shall be considered in the design of the irrigation systems.~~
 2. *Water Meter and SDF.* Irrigation systems require a separate water meter and may require a separate System Development Fee.
 3. *Constrained Areas.* Irrigation of constrained areas such as street rights-of-way, parkways, and medians shall be by drip irrigation or other systems.
- D. **Maintenance Standards.** All landscaped areas shall be kept free from refuse and debris. Maintenance and care of landscaping on mixed-use and nonresidential properties shall be according to the most current [ANSI A300 Standards for Tree Care Operations](#). In other areas, maintenance and care shall meet the following standards:
1. *Abutting rights-of-way.* Landscape areas, including abutting landscaped portions of public rights-of-way, shall be pruned as needed to present a healthy, neat, and orderly appearance at all times.
 2. *Dead Plants.* Maintenance shall include the removal and replacement of dead, dying, or diseased plant material.
 3. *Trees over a street.* Trees extending over a street shall be kept pruned so as to not interfere with street traffic.
 4. *Utility Easements.* Nothing in this Section shall require any application or permit from any public utility provider prior to removing a tree whenever it has determined the tree poses a hazard, or interferes with restoration or continuation of utility services.
- E. **Landscape Installation and Maintenance Plan.** A landscape installation and maintenance plan shall identify the proposed plant installation methods and both short and long-term landscape maintenance programs for all landscaped areas except landscaping of private lots (unless a property owners' association is to maintain the landscaping on private lots). The following is required to be addressed on the maintenance plan:
1. ~~Open Space Landscaping (including common parking lots, if present). The maintenance responsibility shall be set out in the landscape plan that is required by this Section.~~
 2. ~~Landscape Surface Area Landscaping (including parking lots)~~**Parking Lot Landscaping.** The maintenance responsibility shall be set out in the landscape plan that is required by this Section.
 3. ~~Single-Family and Two-Family Lot Landscaping. Landscaping of residential lots as part of a development shall be the responsibility of the lot owner, unless a declaration of covenants, conditions, and restrictions assigns the responsibility to a property owners' association. The maintenance responsibility, if an HOA, shall be noted in the landscape plan that is required by this Section. There shall not be specific requirements for individual lots to maintain specific ornamental landscaping by the Town of Black Mountain.~~
 4. *Street Trees (as applicable).* The maintenance responsibility shall be set out in the landscape plan that is required by this Section.

- F. **Approval and Timing of Approval.** Plans meeting the standards of this UDO shall be approved. However, in reviewing the plans, adjustments in the location of plants may be required where the Town finds such alterations would better serve the purposes for which they are intended. Landscape plans containing street trees and open spaces shall be submitted for approval at the preliminary plat application stage. Landscape plans containing site features, bufferyards, and required landscaping shall be submitted for approval at the building permit stage.



CHAPTER 9: NONCONFORMITIES

Contents:

§ 9.01 Classification of Nonconformities

§ 9.01 Classification of Nonconformities

9.01.01 Purpose and Applicability

- A. **Purpose.** The purpose of regulating nonconformities is to determine which uses and structures would be allowed to continued under the approval of new or amended regulations.
- B. **Establishing Approval Date of Pending Applications.** Any building, structure, or development for which legislative development approval with an expiration date was issued and had not expired prior to the effective date of this UDO may, at the applicant's option, be completed in conformance with the issued permit and any other applicable permits and conditions, even if such building, structure, or development does not fully comply with provisions of this UDO. If a Building Permit is not obtained according to the requirements of the prior UDO or the applicable permit terms, the Town Council may, for good cause shown, grant an extension for the development approval for up to one year for the purpose of obtaining a Building Permit under the terms of the previously applicable UDO. If a Building Permit is not obtained within the time allowed under the original UDO or permit or any extension granted, then the building, structure, or development may be constructed, completed, or occupied only in compliance with this UDO.
- C. **Existing Nonconformities.** Any use, structure, or lot which does not conform to the requirements of this code but which existed before the effective date of this chapter as a legal "pre-existing nonconformance" and which remains nonconforming, and any use, structure, or lot which has become nonconforming as a result of the adoption of this code or any subsequent rezoning or amendment to the text or official map of this chapter, may be continued or maintained only in accordance with the terms of this section.
- D. **Variances.** This section shall not apply to any feature which is the subject of a variance from particular development regulations that has been granted by the Board of Adjustment. Where a variance has been granted which does not otherwise conform to the requirements of this section, that feature shall be deemed conforming.
- E. **Continuance.** Subject to the conditions and exceptions set out in the following sections, a nonconforming lot, building, structure, or use of land existing at the time of the enactment of this code or any amendment thereto may be continued or maintained provided that such nonconformity shall not be:
 - 1. Enlarged or extended except in conformity with this chapter;
 - 2. Reestablished after a discontinuance of 180 days; or
 - 3. Extended beyond the adopted amortization period if applicable.

Section 1.3.1 (1.3.1 Nonconforming uses, structures, and lots.)

- A. (Moved to C above)
- B. (Moved to D above)
- C. (Moved to E above)

9.01.02 Nonconforming Uses

- A. **All Nonconforming Uses.** The following shall apply to nonconforming uses:
1. A nonconforming use shall not be changed to another nonconforming use.
 2. If a nonconforming use is changed to a conforming use, the nonconforming use shall not be resumed.
 3. If the use of only a portion of a building or property is changed from a nonconforming use to a conforming use, then the use of that portion of the building or property shall not be changed back to the nonconforming use.
- B. **Continuance.** As stated in [9.01.01](#) and subject to the conditions and exceptions set out in this section, a nonconforming use of land existing at the time of the enactment of this code or any amendment thereto may be continued or maintained provided that such nonconforming use shall not be:
1. Enlarged or extended except in conformity with this chapter as described below;
 2. Reestablished after a discontinuance of 180 days unless otherwise stated below for a period less than 180 days; or
 3. Extended beyond the adopted amortization period if applicable.
- C. **Damage and Restoration of Structure Housing a Nonconforming Use.** Any conforming structure housing a nonconforming use that is damaged by any means to an extent exceeding 50 percent of its replacement cost shall comply with the use standards of this UDO when it is re-constructed. Any conforming structure housing a nonconforming use that is damaged by any means to a lesser extent may continue the nonconforming use if it is reconstructed and used as before within two years of the damage.
- D. **Extension of a Nonconforming Use.** A nonconforming use may be extended through any portion of a completed building that, when the use was made nonconforming by this Ordinance, was designed or arranged to accommodate the extension of the use. A nonconforming use may not be extended to:
1. Building area constructed after the effective date of this UDO;
 2. Additional buildings or to land outside the original building; or
 3. To cover more land than was occupied, or designed and arranged to be occupied by that use, when it became non-conforming.
- E. **Nonconforming Temporary Uses.** Certain nonconforming uses, due to their individual temporary circumstances, cannot be maintained as a year-round use. These uses, which are identified in Section [2.04.09](#), Temporary Use and Structure Standards, shall be considered abandoned if the temporary use is discontinued for longer than any 12 month period.
- F. **Nonconforming Bona Fide Farms.** Existing bona fide farms may continue as of the time of the effective date of this UDO. Such farms may continue in their current state and with their existing level of activity in accordance with the following:
1. *Expansion.* Such farms shall be permitted to expand to the maximum extent permitted under the requirements of this district on the same property or adjacent property (also having the bona fide farm designations).
 2. *Non-Bona Fide Designation.* New or expanded agri-business operations on property not having a bona fide farm designation shall not be permitted.
 3. *Continuance.* Bona-fide farms which cease to qualify as such may return to active farming and may continue as farms as if they had never ceased operating. However, once a bona fide farm ceases to qualify as such, and the property is developed for other non-farm uses permitted in the applicable district, it may not be re-established as a bona fide farm.

- G. **Discontinuance of Nonconforming Sexually-Oriented Businesses.** Nonconforming sexually-oriented businesses shall be discontinued if that business ceases active operation for a period of 30 days regardless, of the purpose or reason, shall be subject to all the requirements of this Ordinance and the property may thereafter be used only for conforming uses.

9.01.03 Nonconforming Buildings or Structures

A. **Limitations on Nonconforming Building or Structures.**

1. *Continuance.* As stated in 9.01.01 and subject to the conditions and exceptions set out in this section, a nonconforming building or structure existing at the time of the enactment of this code or any amendment thereto may be continued or maintained provided that such nonconforming building or structure shall not be:
 - a. Enlarged or extended except in conformity with this chapter as described below;
 - b. Reused after a discontinuance of 180 days unless otherwise stated below for a period less than 180 days; or
 - c. Extended beyond the adopted amortization period if applicable.
2. *Expansion or Additions.* Expansions or additions to structural parts of a nonconforming building or other structure shall be permitted with the issuance of a building permit. Any expansion or enlargement shall comply with all applicable zoning district dimensional regulations. If this cannot be met, the Board of Adjustment may consider a variance.

B. **Specific Nonconforming Buildings or Structures.** Certain buildings or structures require additional regulations as follows:

1. *Nonconforming Towers.*
 - a. No Expansion. Towers that are constructed and antennas that are installed, in accordance with the provisions of this chapter shall not be deemed to constitute the expansion of a nonconforming use or structure.
 - b. Preexisting Towers. Preexisting towers constructed prior to the adoption of this UDO shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this chapter.
 - c. Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas. Notwithstanding this Section, bona fide nonconforming towers or antennas that are damaged or destroyed by weather events or other non-manmade causes to conform to the requirements of this Ordinance provided the type, height, and location of the tower onsite shall be of the same type and intensity as the original facility; provided, however, that any destroyed lattice or guyed tower shall be replaced with a monopole structure only. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned.
2. *Single-Family or Manufactured Homes on Nonconforming Lots.* A single-family dwelling unit or manufactured home not in a park shall be permitted on any existing, residentially zoned lot of record which contains an area or width less than the required minimum lot size for a single-family dwelling in the district in which a lot is located as long as:
 - a. The lot is in separate ownership and not of continuous frontage with other lots in the same ownership on the effective date of this section. Where single ownership exists among adjacent lots, nonconforming lots shall be brought into compliance.

- b. Variance of any district regulations other than lot size requirements is obtained from the board of adjustment.
 - c. A replacement, nonconforming manufactured home may be placed within 180 days after the previous home is removed and shall conform to the setback standards of the district in which it is located if possible, and, in the event it is not possible to conform to the setback standards of the district, the replacement manufactured home shall not increase the nonconformity of the current setback requirements and shall be placed to achieve the maximum setback possible. After 180 days, new construction or replacement manufactured homes shall conform to the setbacks and other standards of the district in which it is located. All replacement and new manufactured housing shall comply with the requirements for manufactured homes found in this UDO.
3. *Replacement of Nonconforming Manufactured Homes in a Nonconforming Manufactured Home Park.*
- a. Manufactured homes may be placed and replaced in nonconforming manufactured home parks so long as the mobile home park:
 - i. Retains its nonconforming status and so long as the space was designed and arranged as a manufactured housing home space prior to the adoption of this UDO; and
 - ii. Meets the definition of a manufactured home.
 - b. Nonconforming manufactured homes, located in manufactured home parks, which have been unoccupied for a period of 180 days; shall be either removed or replaced with a new manufactured home.
4. *Nonconforming structures occupying conforming lots.*
- a. Any nonconforming structures on conforming lots may be occupied by a conforming use. If any nonconforming structure is proposed to be changed by improving but not expanding the structure to an extent exceeding one-half or 50 percent of its current value, exclusive of foundations, as determined by the building inspector, or if any additions or expansions are made to the structure, then the entirety of the improved building or structure must be in conformance with the dimensional requirements of the district or a variance must be obtained through an action of the board of adjustment.
 - b. Structures which are nonconforming in so far as they violate the front, side and/or rear setback requirements of the district in which they are located can be added to providing that no further encroachment occurs to the setback.
 - c. Any multi-family dwellings that are in nonconforming structures must meet the minimum lot area standards for multi-family or for the applicable special use permit requirements in the zoning district in which it is located and may not be expanded. No variance may be provided by the board of adjustment to expand a nonconforming multi-family structure.
 - d. An existing nonconforming structure may be incorporated within a new special use permit request as long as the other structures and components of the master plan conform to the special use permit requirements.
 - e. A nonconforming structure does not make other structures, such as accessory structures and fences, nonconforming on the same lot. Each nonconforming structure stands alone in its nonconformance and will not affect a conforming structure.

C. Maintenance and Repairs of Nonconforming Structures.

- 1. Maintenance and repair necessary to keep any nonconforming structure in sound condition, or to maintain a conforming structure on a nonconforming lot in sound condition, are permissible as long as the repairs do not increase the nonconformity.

2. Nothing in this chapter shall prevent the strengthening of, or restoration to, a safe or lawful condition of any part of any building or structure declared unsafe or unlawful by the building inspector, fire marshal, or any other duly authorized town official.
3. Any nonconforming building or structure which is damaged by fire or natural casualty may be repaired, provided such repair be accomplished:
 - a. Without any increase in the square footage, building height, or floor area;
 - b. Without any change in location except to provide greater conformance with district setback requirements;
 - c. Within 180 days of a fire; provided that the fire-damaged structure does not otherwise violate the state fire prevention code;
 - d. That the use to which the building or other structure is put after repair does not result in a change from one nonconforming use to another nonconforming use;
 - e. Any nonconforming building or any building containing a nonconforming use which has been damaged by fire to an extent exceeding 50 percent of its structure or 50 percent of its value at the time of the destruction, shall cause any repair, reconstruction, or re-use to be in conformity with the provisions of this chapter.

Previous Language (all incorporated above)

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

A single-family dwelling unit, or a replacement manufactured home meeting the criteria set forth in section 5.14, shall be permitted on any existing, residentially zoned lot of record which contains an area or width less than the required minimum lot size for a single-family dwelling in the district in which a lot is located as long as:

The lot is in separate ownership and not of continuous frontage with other lots in the same ownership on the effective date of this section. Where single ownership exists among adjacent lots, nonconforming lots shall be brought into compliance.

Variance of any district regulations other than lot size requirements is obtained from the board of adjustment.

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

After 180 days, new construction or replacement manufactured homes shall conform to the setbacks and other standards of the district in which it is located.

All replacement and new manufactured housing shall comply with the requirements for manufactured homes found in Chapter 5.

1.3.3 Nonconforming structures occupying conforming lots.

Any nonconforming structures on conforming lots may be occupied by a conforming use. If any nonconforming structure is proposed to be changed by improving but not expanding the structure to an extent exceeding one-half or 50 percent of its current value, exclusive of foundations, as determined by the building inspector, or if any additions or expansions are made to the structure, then the entirety of the improved building or structure must be in conformance with the dimensional requirements of the district or a variance must be obtained through an action of the board of adjustment.

Structures which are nonconforming in so far as they violate the front, side and/or rear setback requirements of the district in which they are located can be added to providing that no further encroachment occurs to the setback.

Any multi-family dwellings that are in nonconforming structures must meet the minimum lot area standards for multi-family or for the applicable special use permit requirements in the zoning district in which it is located and may not be expanded. No variance may be provided by the board of adjustment to expand a nonconforming multi-family structure.

An existing nonconforming structure may be incorporated within a new special use permit request as long as the other structures and components of the master plan conform to the special use permit requirements.

A nonconforming structure does not make other structures, such as accessory structures and fences, nonconforming on the same lot. Each nonconforming structure stands alone in its nonconformance and will not affect a conforming structure.

1.3.4 Nonconforming use of structures, buildings, or land.

A legally established nonconforming use may be continued subject to the following limitations:

When a nonconforming use of a structure has been changed to a conforming use, it may not later be used for any nonconforming use.

A nonconforming use of a structure that is ceased for a continuous period of more than 180 days may not be re-established and all subsequent uses of the structure must be in conformance with the particular district regulations.

A nonconforming use of land or buildings or structures shall not be changed to any new use other than a use listed as permitted or special use within the district in which it is located.

1.3.6 Maintenance and repairs of nonconforming structures.

Maintenance and repair necessary to keep any nonconforming structure in sound condition, or to maintain a conforming structure on a nonconforming lot in sound condition, are permissible as long as the repairs do not increase the nonconformity.

Nothing in this chapter shall prevent the strengthening of, or restoration to, a safe or lawful condition of any part of any building or structure declared unsafe or unlawful by the building inspector, fire marshal, or any other duly authorized town official.

Any nonconforming building or structure which is damaged by fire or natural casualty may be repaired, provided such repair be accomplished:

Without any increase in the square footage, building height, or floor area;

Without any change in location except to provide greater conformance with district setback requirements;

Within 180 days of a fire; provided that the fire-damaged structure does not otherwise violate the state fire prevention code;

That the use to which the building or other structure is put after repair does not result in a change from one nonconforming use to another nonconforming use.

Any nonconforming building or any building containing a nonconforming use which has been damaged by fire to an extent exceeding 50 percent of its structure or 50 percent of its value at the time of the destruction, shall cause any repair, reconstruction, or re-use to be in conformity with the provisions of this chapter.

9.01.04 Nonconforming Lots

- A. **Continuance.** Permitted uses in any district may be allowed on any single lot of record existing at the effective date of adoption or amendment of this UDO if:
 - 1. A nonconforming lot does not expand or extend on the same or adjoining property; or
 - 2. A nonconforming lot is discontinued or changed, that any future use of land or portion conforms with this UDO's provisions; and
 - 3. Such lot shall be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, generally applicable in the zoning district.
- B. **Creation of Nonconforming Lots Prohibited.** The subdivision of any land may not result in a lot area or dimension that does not meet the minimum standards of this UDO.
- C. **Permitted Use.** Any existing lot of record which does not conform with lot area, depth, or width requirements may be used for any permitted use in that zoning district so long as the parcel is not reduced in any manner or diminished so as to cause yards, lot coverage, or other open spaces to be less than required, except as provided in subsection D, below.
- D. **Dimensional Requirements.** Dimensional requirements other than those applying to lot area, depth, or width shall be met, provided that the Director may allow a reduction of not to exceed 25 percent in the dimension of any required yard. Approval shall depend upon a written finding that such reduction is reasonably necessary for practical use of the lot and will not have substantial adverse effects on adjacent property. Reduction of yard requirements by more than 25 percent shall be obtained only through a variance granted by the Board of Adjustment.

(worked in above)

Ref -- Section 1.3.5 (1.3.5 Nonconforming vacant lots.)

- A. A nonconforming vacant lot may be used for any of the uses permitted in the zoning district in which it is located if the setbacks and district requirements are met or if the owner is granted a variance by the board of adjustment.
- B. If a nonconforming vacant lot adjoins and has continuous frontage with one or more other lots in the same ownership, the owner of the nonconforming lot may not take advantage of the provisions of this section without combining these adjoining lots.
- C. A lot that is only nonconforming due to the fact that it does not comply with access standards can be developed with one single-family residence and typical residential accessory structures if some form of legal access is provided to the property.

9.01.05 Development Standards

- A. **Generally.** This Section ensures that the site elements that met the requirements of previous development regulations are not modified to increase their degree of nonconformity.

B. Nonconforming Driveway.

1. *Continuance.* Any nonconforming driveway access is permitted to continue as a nonconforming driveway until:
 - a. Any additional driveway is constructed for the subject property or for the unified development of which it is a part; or
 - b. The driveway requires reconstruction or repaving.
2. *Termination.* If the criteria in Subsection B., Nonconforming Driveway, are met, the nonconforming driveway shall no longer be permissible, and the Director shall require new driveway access to meet the requirements of this UDO.

- C. **Other Nonconforming Site Elements.** No other nonconforming site element may be modified except to bring the site element into greater compliance with the requirements of the UDO.

9.01.06 Signs or Billboards

- A. **Nonconforming Sign Defined.** A nonconforming sign or billboard means any existing sign or billboard on or after the effective date of this UDO that does not comply with all the regulations applicable to the zoning district and development standards in which the sign or billboard is located.
- B. **Sign Includes Billboard.** The use of the term "sign" in this Section includes the term "billboard" unless specifically stated otherwise.
- C. **Moving.** A nonconforming sign shall not move in whole or in part from or within the lot in which it is located, unless every portion of such building or structure is made to conform to all regulations of the district in which it is located.
1. *New Copy.* A nonconforming sign existing at the time of the effective date of this Section may continue if changed to or replaced with another sign that complies with this UDO. If the existing sign face is structurally safe and holds a valid permit or an approved nonconformity registration, additional new sign copy is permitted if that change or alteration does not result in:
 - a. A change in message method or technology;
 - b. An increase in sign illumination;
 - c. An increase in sign face area;
 - d. Structural alteration to extend its useful life;
 - e. Any dimensional expansion;
 - f. Reestablishment of the sign after damage or destruction if the cost of repairing the sign is greater than 50 percent of its replacement value at the time of damage or destruction;
 - g. Modification or relocation that increases the sign's nonconformity;
 - h. Modification or additional lighting or any other enhancement;
 - i. Replacement poles subject to a Building Permit, but only if not more than one-half of the total number of poles of the sign structure are replaced in any 12 month period and the same material is used for the replacement poles;
 - j. Addition of a catwalk to the sign structure;
 - k. Addition of lighting to an unilluminated sign or addition of more intense lighting to an illuminated sign, whether or not the lights are attached to the sign structure;
 - l. Changing the number of poles in the sign structure;
 - m. Addition of permanent bracing wires, guy wires, or other reinforcing devices;

- n. Changing the material used in the construction of the sign, such as replacing wooden material with metal material;
 - o. Addition of faces to a sign or changing the sign configurations;
 - p. Increase in sign height;
 - q. Changing the configuration of the sign structure;
 - r. Moving the sign.
2. *Repair or Maintenance.* This provision shall not prevent repair or maintenance of any part of a sign structure to a safe condition or performing normal maintenance operations on a sign or sign structure. The following actions are considered maintenance and are allowed without losing the legal nonconforming status of the sign:
- a. Replacement of nuts and bolts;
 - b. Nailing, riveting or welding;
 - c. Cleaning and painting;
 - d. Manipulation of sign structure to level or plumb it;
 - e. Replacement of minor parts if the material of the minor parts are the same type as those being replaced and the basic design or structure of the sign is not altered; and
 - f. Changing all or part of the sign face with materials similar to those being replaced.

- D. **Abandonment and Termination of a Nonconforming Sign.** A nonconforming sign is deemed abandoned and the right to operate a nonconforming sign terminates immediately if any of the following occur:
1. *Non-Use.* The non-use of the sign for a continuous period of more than 180 days.
 2. *Damage or Destruction.* A portion or all of the sign is damaged or destroyed by the intentional act of the owner or his or her agent.
 3. *Dilapidation.* Discontinuance or abandonment occurs irrespective of the intent of the property owner if the nonconforming sign is dilapidated, substandard, or is not maintained in a suitable condition during a continuous period of 180 days.
 4. *Change in Business.* If a nonconforming sign which advertises a business service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be deemed abandoned and shall be removed or brought into compliance by the sign owner, property owner, or other party having control over such sign within 30 days after the use has ceased operation or the service or commodity has ceased being offered.
 5. *Change in Business Name.* If there is a change of use or name of a business on a particular piece of property, and there were one or more signs which advertised the business, any new signs placed for the new use or business name must meet all sign requirements or the underlying zoning district
 6. *Blank Signs.* If a nonconforming sign remains blank for a continuous period of one hundred eighty (180) days, that sign shall be deemed abandoned and shall, within thirty (30) days after such abandonment, be altered to comply with this Ordinance or be removed by the sign owner, owner of the property where the sign is located, or other person having control over such sign. For purposes of this ordinance, a sign shall be deemed "blank" when:
 - a. It advertises a business, service, commodity, accommodations, attraction, or other enterprise or activity that is no longer operating or being offered or conducted;
 - b. the advertisement message it displays becomes illegible in whole or part; or
 - c. It does not contain an advertising message. (For such purposes, the terms "Sign For Rent" "Sign For Lease", "Sign For Sale", etc. shall not be deemed to be an advertising message.