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 February 27, 2023
Date: February 20, 2023

The **Town of Black Mountain Planning Board** will meet on **Monday, February 27, 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 January 23, 2023;

3. Annexation Request – Chinquapin Hill;

4. UDO Review – Remainder of Chapter 2, Chapter 9, and Chapter 10

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, February 27, 2023, at 6:00 p.m.
Lunes 27 de febrero de 2023, a las 6:00 p.m.

The Black Mountain Planning Board will meet for their regular monthly meeting on **Monday, February 27, 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 27 de febrero 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

The Town of Black Mountain is committed to providing accessible facilities, programs and services for all people in compliance with the Americans with Disabilities Act (ADA). Should you need assistance or a particular accommodation for this meeting please contact, Jennifer Tipton at (828) 419-9371 or by email at Jennifer.tipton@tobm.org.
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 02/01/2023

www.townofblackmountain.org

Planning Board Regular Meeting
February 27, 2023

PROPOSED AGENDA

I. CALL TO ORDER
- **Welcome**
- **Determination of Quorom**

II. ADOPTION OF AGENDA
- **Motion:** To adopt the agenda as presented [or as amended]

III. ADOPTION OF MINUTES
- **Motion:** To adopt the minutes of January 23, 2023, as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS
- Annexation Petition – Chinquapin Hill
- UDO Review – Remainder of Chapter 2, Chapter 9, and Chapter 10
-

VI. COMMUNICATION FROM PLANNING BOARD

VII. COMMUNICATION FROM STAFF

VIII. ADJOURNMENT

The Black Mountain Planning Board held its regular meeting on Monday, January 27, 2023, 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
Pam Norton, Vice Chair
Kathy Phillips
Lauronda Teeple
Joe Laudenslayer
Rick Earley
Chas Fitzgerald

Staff:

Jessica Trotman, Planning Director
Russel 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 seven (7) members.

II. ADOPTION OF AGENDA

The agenda was adopted by consensus.

III. ADOPTION OF MINUTES

Pam Norton said that Vice-Chair needed to be added next to her name. Chas Fitzgerald made a motion to adopt the minutes of October 24, 2022, as amended. The motion was approved by consensus.

IV. NEW BUSINESS

1. UDO Presentation – Kelli McCormick, Kendig Keast Collaborative

Kellie McCormick reviewed the deliverables schedule, which goes through April. Ms. McCormick stressed the importance of the annotated outline and said an updated version would be sent out tomorrow. Ms. McCormick then went over the UDO sections.

Chapter 1: Pam Norton noted that Table 2.01.03-1 has typos in the names of zoning districts. Ms. McCormick said that she will correct the typos. Chas Fitzgerald noted the redundancy of some of the text. Ms. McCormick said that she has received this comment from staff as well and will make the corrections.

Chapter 2: Zoning Districts: Ms. McCormick noted that the Future Land Use category will be deleted.
Section 2.04.08: Ms. McCormick said she will bring more on accessory uses to the next meeting.
Section 2.04.09: Chas Fitzgerald noted that water/sewer wouldn't be required for uses such as POD's. Jessica Trotman suggested adding something like "where applicable/relevant" and the

board members concurred. Ron Sneed noted that POD's versus temporary onsite storage is confusing and Ms. McCormick said that she will clarify those uses.

Chapter 3: Section 3.01.01: Chris Collins said that he would like to see the outdoor storage section be more quantitative. Pam Norton asked how compliance is explained. Jessica Trotman explained that staff uses the approved site plan to ensure compliance. Chas Fitzgerald asked if the Town has a dark sky ordinance. Ms. Trotman explained that the town does have a dark sky ordinance but only in the sense that the lighting regulations that cover commercial properties serve to prevent glare and excessive lighting.
Section 3.02.02: Chris Collins asked if North Carolina allows window visibility standards for single-family homes. Jessica Trotman said that they do not.
Section 3.02.03: Pam Norton asked how we can make it easy for manufactured home temporary use renewals be easy in the context of a disaster. Jessica Trotman suggested case-by-case consideration by staff and board members concurred.
Use of manufactured homes for temporary use versus permanent use: Chas Fitzgerald suggested that items B through H should be "only required if the structure is for permanent" and board members agreed.

Chapter 9: Ms. McCormick did a quick overview of nonconforming uses.

Lauronda Teeple asked about the fence language and after discussion, board members agreed that they want the UDO to state fence height maximums of four feet for the front and eight feet for the rear, with clarification that at corner lots, both sides facing a street are limited to four feet.

Chas Fitzgerald said that he likes the idea of Joe Laudenslayer's idea of a work session for board members to hammer out their comments on the next draft of the UDO. Board members agreed and Ms. Trotman noted the gathering will be have to be notices. Staff will send out a poll to find a date that works for everyone.

V. OLD BUSINESS

None.

VI. PUBLIC COMMENT

Theresa Fuller, 207 Rhododendron Avenue, expressed her concerns about the process being transparent and knowing fully what's being proposed.

Philip Bisesi, 15 Hi View Drive, expressed his concerns about large vehicles obstructing traffic and visibility on Broadway Street. Board members concurred and noted that Town Council might be approving a parking study for Broadway Street soon, which might address the issue of oversized vehicles.

VII. COMMUNICATION FROM PLANNING BOARD

None.

VIII. COMMUNICATION FROM STAFF

None.

VX. ADJOURNMENT

Chris Collins made a motion to adjourn the meeting at 7:45 p.m. The motion was approved by consensus.

Prepared by:

_____
Chris Collins, Chair

_____
Jennifer Tipton, Senior Admin

dotloop signature verification: dtlp.us/E7pp-hHfE-qgUS

TOWN OF BLACK MOUNTAIN

VOLUNTARY ANNEXATION SUBMITTAL REQUIREMENTS

Only complete submittals will be processed. The following items are required to be submitted to the Planning and Development Department in order for your application to be deemed complete:

☑ Original Petition Form Signed by ALL Owners of the property

☑ Legal Description of the area to be annexed in both hard and digital (Word) format

☑ A complete copy of the last deed of record for each parcel of property to be annexed

☑ 3 paper copies of the draft annexation plat prepared by a registered land surveyor including the following information:

- Title block:
  Annexation File #: _____
- Vicinity map showing location of property in relation to the primary corporate town limits (indicate where corporate limits are adjacent to the property or the location of the closest point of the primary Town Limits)
- Surveyor's certificate
- The following review officer's certificate:

Review Officer's Certificate
State of North Carolina
Buncombe County
I, _____, Review Officer of Buncombe County, certify that the plat or map to which this certification is affixed meets all statutory requirements for recording.

_____
Review Officer Date

After the draft annexation plat is approved by Town staff, one (1) mylar and two (2) paper copies of the Annexation Plat as well as ten 11x17 paper copies will be required to be submitted prior to the Public Hearing and official action by the Board of Aldermen.

Received by: _____ Date: _____
Application Complete: ☐ Yes ☐ No

Completed annexation petition form certified by: _____
Date: _____

dotloop signature verification: dtlp.us/E7pp-hHfE-qgUS

VOLUNTARY ANNEXATION PETITION FORM

To: The Town of Black Mountain Board of Aldermen

Date: 1-5-2023

We, the undersigned, being all of the owners of the real property described herein, respectfully request that the area described herein be annexed to the Town of Black Mountain pursuant to the provisions of G.S. 160A-31.

The area to be annexed is ☑ **contiguous** ☐ **non-contiguous** to the existing Town Limits and the boundaries of such territory are as indicated on the attached map and description.

Parcel Identification Number(s): 0710109234000000

Current County Zoning District: R-LD

Town Zoning District designation requested: UR-8

Buncombe County property tax valuation: $217,200 (PRIOR TO SUBDIVISION)

Do you declare vested rights*? ☐ yes ☑ no

*We acknowledge that any zoning vested rights acquired pursuant to G.S. 160A-385.1 or G.S. 153A-344.1 must be declared and identified on this petition. We further acknowledge that failure to declare such rights on this petition shall result in a termination of vested rights previously acquired for the property. (If zoning vested rights are claimed, indicate "yes" and attach proof.)

Are you requesting water service from the Town of Black Mountain? ☑ yes ☐ no

Number of existing residential dwelling units: 0 Number of commercial units: 0

A legal description of the area, complete copy of the last deed of record for each parcel of property to be annexed, and copies of the draft annexation plat prepared by a registered land surveyor are attached. We have also provided the following for your additional information:
Please feel free to attach any additional information you feel may help the Board of Aldermen in determining the appropriateness of annexing this parcel into the Town of Black Mountain.

Property Owner(s): Address: Signature: Date:
All property owners must sign this petition including husband and wife if jointly owned. Add other sheets as needed.

Libby Roberts-Snelling dotloop verified 02/03/23 2:35 PM MST ICRR-SXIW-DCQH-SMMO

Vince Snelling dotloop verified 02/03/23 2:32 PM MST WWBS-9CHY-Z1AE-9ESB

Please Return Completed Applications to the Town of Black Mountain Planning and Development Department, 160 Midland Avenue, Black Mountain, NC 28711, (828) 419-9300.

Dear Planning Board,

Please accept this description of the property in lieu of a Legal Description. Our attorney requested a recorded survey of the property in order to provide a legal description. We can't record the survey until the property is accepted for annexation.

The properties to be annexed are shown on the attached survey as Lot 1, Lot 2, and Lot 3.

PLAT NORTH
PB 210, PAGE 172

ORIGINAL DOCUMENT RETURNED TO CUSTOMER AT TIME OF RECORDING

CERTIFICATE OF APPROVAL FOR SPECIAL SUBDIVISIONS

THIS FINAL PLAT HAS BEEN REVIEWED BY THE BUNCOMBE COUNTY PLANNING AND DEVELOPMENT DEPARTMENT AND MEETS THE REQUIREMENTS FOR A SPECIAL SUBDIVISION. ACCESS TO THIS SUBDIVISION IS CONSIDERED A PRIVATE DRIVEWAY OR PRIVATE ROAD. ADDITIONAL LOTS PAST THE FIRST TWO (2) RECORDED LOTS WITHIN THIS SPECIAL SUBDIVISION MAY NOT BE SUBDIVIDED FOR THREE (3) YEARS AFTER THE DATE OF THE RECORDATION OF THIS PLAT. ANY FURTHER SUBDIVISION THAT OCCURS WITHIN THE THREE (3) YEARS FROM THE DATE OF RECORDATION SHALL BE CONSIDERED A MINOR SUBDIVISION. THIS APPROVAL SHALL BE VOID UNLESS THE FINAL PLAT IS RECORDED IN THE OFFICE OF THE BUNCOMBE COUNTY REGISTER OF DEEDS WITHIN 180 DAYS FROM THE DATE OF APPROVAL BY THE PLANNING AND DEVELOPMENT DEPARTMENT.

_____
DATE COUNTY PLANNER

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

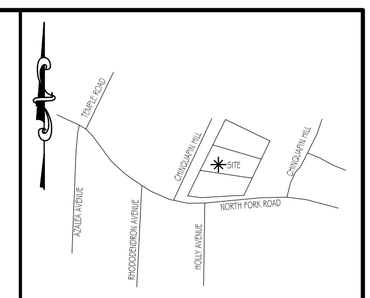
I, _____, REVIEW OFFICER OF BUNCOMBE COUNTY, CERTIFY THAT THIS MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

_____
REVIEW OFFICER DATE

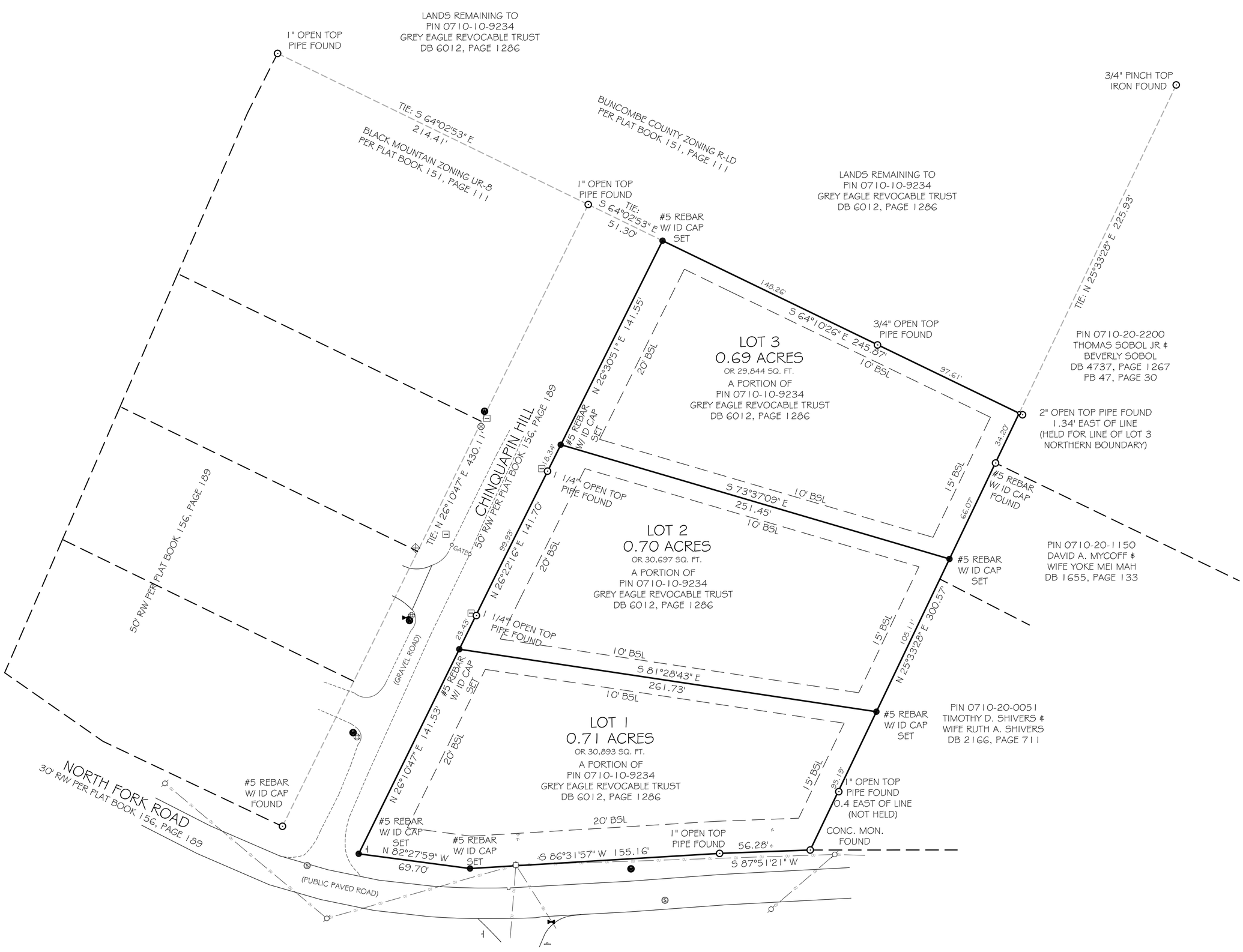
REGISTERED THIS THE _____ DAY OF _____
2022 AT _____M, RECORDED IN BOOK _____
AT PAGE _____.

_____
REGISTER OF DEEDS

BY _____ DEPUTY



VICINITY MAP NOT TO SCALE



LEGEND:
-OU- = OVERHEAD UTILITY LINE
- - - = EDGE OF GRAVEL
= CALCULATED POINT
= MONUMENT AS NOTED
= IRON FOUND (AS NOTED)
= #5 REBAR W/ ID CAP SET
= WATER METER
= WATER VALVE
= FIRE HYDRANT
-x- = FENCE
= UTILITY POLE
= SEWER MANHOLE
= CABLE PEDESTAL
= TELEPHONE PEDESTAL
= ELECTRICAL PEDESTAL
= MAILBOX
= LIGHT POLE
BSL = BUILDING SETBACK LIMITS

NOTES:

* TOTAL AREA IS 2.10 ACRES OR 91,433 SQ. FT.

* ALL AREAS CALCULATED BY COORDINATE COMPUTATION METHOD.

* THIS SURVEY WAS PREPARED WITHOUT BENEFIT OF ABSTRACT TITLE AND MATTERS OF TITLE SHOULD BE REFERRED TO AN ATTORNEY-AT-LAW.

* THIS SURVEY MAY BE SUBJECT TO ALL RIGHTS-OF-WAYS, EASEMENTS, RESERVATIONS, AND RESTRICTIONS WRITTEN AND UNWRITTEN, RECORDED AND UNRECORDED.

* ADJOINING PROPERTY OWNER INFORMATION TAKEN FROM THE BUNCOMBE COUNTY GIS WEBSITE.

NOTES:

* NO UNDERGROUND UTILITIES WERE LOCATED. CALL 1-800-632-4949 BEFORE DIGGING.

* NO HORIZONTAL CONTROL FOUND WITHIN 2000'.

* BASED ON GRAPHICAL LOCATION, THE SUBJECT PROPERTY IS LOCATED IN ZONE X, AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOOD PLAIN, AS SHOWN ON FIRM MAP NUMBER 3710071000J WITH EFFECTIVE DATE OF JANUARY 6, 2010.

* ANY STREAMS, CREEKS, PONDS, LAKES, WETLANDS, ETC...LOCATED ON THIS PROPERTY SHOWN OR NOT SHOWN HEREON, MAY BE SUBJECT TO BUFFER AREAS. IT IS THE OWNER/DEVELOPER'S RESPONSIBILITY TO HAVE THE AREAS DESIGNATED BY PERSON(S) / FIRM(S) AUTHORIZED, BY THE PROPER AUTHORITIES, TO MAKE SUCH DETERMINATION.

* ALL DISTANCES SHOWN HEREON ARE HORIZONTAL GROUND DISTANCES UNLESS OTHERWISE NOTED.

* ZONED AS R-LD WITH SETBACK LIMITS OF
FRONT: 10'
SIDE: 10'
REAR: 20'

I, JAMES A. MITCHELL, III, N.C. P.L.S., CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (PROPERTY DESCRIPTION RECORDED IN DEED BOOKS AS SHOWN); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED BY DASHED LINES AS DRAWN FROM INFORMATION FOUND IN DEED BOOKS AS SHOWN; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000 OR GREATER; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.

I ALSO HEREBY CERTIFY THAT THIS SURVEY IS OF THE FOLLOWING CATEGORY AS DESCRIBED IN G.S. 47-30(f)(11):

PRELIMINARY
FINAL PLAT OF SURVEY THAT CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND;
NOT FOR RECORDING,
SALES OR
SALES, OR
CONVEYANCE

WITNESS MY SIGNATURE, LICENSE NUMBER, AND SEAL THIS 31ST DAY OF OCTOBER, A.D., 2022.

_____ L-4832
N.C. PROFESSIONAL LAND SURVEYOR LICENSE #

NORTH CAROLINA PROFESSIONAL SEAL L-4832 LAND SURVEYOR JAMES A. MITCHELL, III

JAMES A. MITCHELL, III, PLS, PLLC
P.O. BOX 98
OLD FORT, NC 28762
828-606-3646
jmitchell3pls@gmail.com
P-2272

CURRENT OWNER(S)
GREY EAGLE REVOCABLE TRUST
P.O. BOX 541
HAMILTON, MT 59840

SUBDIVISION OF LAND FOR
LIBBY ROBERTS SNELLING
AND
THE GREY EAGLE FAMILY TRUST

REFERENCES
A PORTION OF PIN 0710-10-9234
DEED BOOK 6012, PAGE 1286

TOTAL AREA = 2.10 AC. OR 91,433 SQ. FT.
BLACK MOUNTAIN TOWNSHIP, BUNCOMBE COUNTY, N.C.
DATE: 10-20-22 DRAWN BY: J. GREY
JOB #220810 CHECKED BY: J. MITCHELL

40' 0' 40' 80'

SCALE 1" = 40'

DWG. # 220810

Doc ID: 034471130004 Type: CRP
Recorded: 01/28/2021 at 12:13:16 PM
Fee Amt: $26.00 Page 1 of 4
Revenue Tax: $0.00
Workflow# 0000664687-0001
Buncombe County, NC
Drew Reisinger Register of Deeds
BK 6012 PG 1286-1289

NORTH CAROLINA SPECIAL WARRANTY DEED

This instrument prepared by Stephanie B. Irvine, a licensed NC attorney. Delinquent taxes, if any, to be paid by the closing attorney to the County Tax Collector upon disbursement of the closing proceeds.

Excise Tax: None
Parcel Identifier No. 0710-22-1290-0000, 0710-10-9234-0000, 0710-10-6251-0000

Mail/Box to: Grantee at address below ✓

This instrument was prepared by: Stephanie B. Irvine 825-C Merrimon Ave #321, Asheville, NC 28804

No title search requested or performed.

THIS DEED made this 25th day of January, 2021, by and between

GRANTOR	GRANTEE
Elizabeth Baugh Roberts, Administrator CTA of the Estate of John Alexander Roberts; **Elizabeth Baugh Roberts and husband Vincent R. Snelling** **POB 541** **Hamilton, MT 59840**	**Grey Eagle Revocable Living Trust** **POB 541** **Hamilton, MT 59840**

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in Town Mountain Township, Buncombe County, North Carolina and more particularly described as follows:

All those certain tracts or parcels of land located in Black Mountain Township, Buncombe County North Carolina acquired by John A. Roberts, aka John Alexander Roberts by Deed dated July 11, 1989 recorded in Book 1542, page 83 and subsequently corrected by Deed recorded in Book 1568, page 779 and Deed dated January 24, 1978, recorded in Book 1187, Page 591 of the Buncombe County Registry. See also Deed Book 457, Page 561 for further chain of title.

The tracts herein conveyed include Buncombe County Tax Parcel No:
0710-22-1290-0000, containing 34.58 Acres
0710-10-9234-0000, containing 8.41 Acres
0710-10-6251-0000, containing .43 Acres

Less and Except Lots 1 and 2 as shown on Survey for John Alexander Roberts recorded in Plat Book 152, Page 111 and Plat book 156, Page 189 which were conveyed by Deeds recorded in Book 5437, Page 232 and Book 5476, Page 1226 subject to the following as set forth in said Deeds:

TOGETHER WITH AND SUBJECT TO all restrictions, easements and rights of way of record, including, but not limited to, those Declaration of Covenants, Conditions and Restrictions and Road Maintenance Agreement dated June 16, 2016, and recorded in Book 5437, at Page 229, of the Buncombe County Public Registry.

FURTHER TOGETHER WITH AND SUBJECT TO, a non-exclusive and permanent right of way and easement for ingress, egress, and regress over that 50' right of way commonly known as Chinquapin Hill as shown on said Plat recorded in Book 156, at Page 189, Buncombe County Registry, from Lot 1 or 2 to North Fork Road (S.R. 2474).

AND FURTHER, TOGETHER WITH a permanent easement for ingress, egress, and regress for the installation, maintenance, repairing, inspecting and operation of all water, sanitary sewer and utility lines over, under and upon that 50 t right of way as shown on said Plat, referenced above, so as not to interfere with the vehicular access for the use the private drive known as Chinquapin Hill. See easement recorded in Book 5465 page 1466 and Plat Book 164, Page 83 which detail the Sanitary Sewer Easement relative to Lots 1 and 2 on Chinquapin Hill.

Less and Except Lot 4 as shown on the Survey for John Alexander Roberts recorded in Plat Book 156, Page 189, which Lot bears Buncombe County Parcel Number 0710-10-7302-00000 and is known as 1 Chinquapin Hill.

John Alexander Roberts passed away on December 9, 2018. Elizabeth Baugh Roberts was granted Letters Testamentary as Administrator CTA pursuant to the Last Will and Testament of John Alexander Roberts on February 7, 2020. She has administered the Estate of John Alexander Roberts pursuant to the laws of North Carolina, including the publishing of Notice to Creditors. Elizabeth Baugh Roberts is the sole heir of John Alexander Roberts.

The property herein conveyed is not the primary residence of the Grantor.

The property hereinabove described was acquired by Grantor through the Estate of John Alexander Roberts, Buncombe County File 19-E-348.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, other than the following exceptions: None.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

Estate of John Alexander Roberts

_____ (SEAL)
Elizabeth Baugh Roberts, Administrator CTA

Elizabeth Baugh Roberts (SEAL)

Vincent R. Snelling (SEAL)

State of Montana – County of Ravalli

I, the undersigned Notary Public of the County and State aforesaid, certify that Elizabeth Baugh Roberts, Administrator CTA of the Estate of John Alexander Roberts personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 25 day of January, 2021.

My Commission Expires: Aug 18, 2024

Notary Public - Signature

SEAL

KELSEY ISHERWOOD
Notary Public for the
State of Montana
Residing at CORVALLIS, MT
My Commission Expires
August 18, 2024

Kelsey Isherwood
Notary Public – Printed Name

State of Montana – County of Ravalli

I, the undersigned Notary Public of the County and State aforesaid, certify that Elizabeth Baugh Roberts, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 25 day of January, 2021.

My Commission Expires: Aug 18, 2024

Notary Public - Signature

SEAL

KELSEY ISHERWOOD
Notary Public for the
State of Montana
Residing at CORVALLIS, MT
My Commission Expires
August 18, 2024

Kelsey Isherwood
Notary Public – Printed Name

State of Montana – County of Ravalli

I, the undersigned Notary Public of the County and State aforesaid, certify that Vincent R. Snelling, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 25 day of January, 2021.

My Commission Expires: Aug 18, 2024

Notary Public - Signature

SEAL

KELSEY ISHERWOOD
Notary Public for the
State of Montana
Residing at CORVALLIS, MT
My Commission Expires
August 18, 2024

Kelsey Isherwood

Notary Public – Printed Name

§ 2.03 Special Purpose and Overlay Districts

2.03.01 Highway Overlays

A. **Purpose**. Highway overlays are established to recognize specific corridors as unique areas that promotes a mix of uses include commercial, retail, office, and special areas, along the corridor.

B. **Intent**. These corridors are the primary entrances, or "gateways," and thoroughfares through town. These overlays preserve and encourage the beautification of the corridors to promote economic development and investment along the corridors; promote automobile, bicycle, and pedestrian safety along the corridors; implement selected recommendations from corridor studies; promote inter-modal transportation and support transit; and maintain the small-town feel and traditional character of the town.

C. **Establishment.** These overlays are established over properties and uses immediately adjacent to the corridors through the jurisdiction of Black Mountain, with the exception of the central business district and the industrial districts (HI-0 and LI-8). Unless explicitly stated otherwise within the regulations of the overlay, all other regulations of the underlying zoning district shall apply..

D. **Applicable Corridors.** The following Highway overlays are hereby established and called "corridor" within these standards:

1. *US 70.* This is established from _____ to _____.
2. *NC 9*. This is established from Blue Ridge Road to the corporate limits.
3. *E. State Street.* This is established from _____ to _____.

E. **Overlay Standards**.

1. *Building Setbacks.* Buildings adjoining the overlay rights-of-way shall be no more than 50 feet from the curb and gutter of the corridor as a maximum setback unless part of a special use permit.
2. *Building Orientation.* Buildings adjoining the overlay rights-of-way shall be designed so that the building is oriented to the roadway. Buildings must have a minimum of one primary entrance opening directly toward the street and connect to the public sidewalk either directly or by a walkway or other facility such as an arcade, patio, or stairs and ramp that accommodates pedestrians and wheelchairs.
3. *Facade Standards.*
    a. Doors, glazed openings or windows, and porches are considered openings on the facade of a building. All ground level exterior walls directly facing the corridor, intersections, and/or other public streets shall have a minimum of 50% openings the length of the wall.
    b. Buildings shall avoid long, monotonous, uninterrupted walls or roof planes longer than 100 feet on their facades that are visible from the corridor. Building wall offsets, such as changes in materials, use of projections or awnings, recesses, and changes in floor level, shall be used in order to add architectural interest and variety and relieve the visual effect of a single, long wall.
    c. Changes to the roofline (such as a staggered parapet or other articulation on the roofline facing the street) shall be provided every 100 feet to meet this requirement and to lend architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof. Structural signage of similar material to the building and attached to the building may be used to meet this requirement.
4. *Parking.*
    a. Unless as part of a special use permit, parking areas shall be in the side or rear of the primary structure on the lot to the greatest extent practicable. The exemption to this requirement is

handicapped parking spaces or parking areas providing less than 20 spaces which may be located in the front buildings.

b. When parking lots abut the sidewalk adjacent to a corridor, a planted buffer area of average of six-feet-wide, and a minimum of three-feet-wide is required to separate the sidewalk from the parking lot. The buffer shall contain continuous landscaping of shrubbery and/or flower beds, or plantings. Where a parking lot abuts the sidewalk along the corridor for a length of more than 200 linear feet, then a break in the landscaping and a pedestrian connection to the parking area is required.

c. Town parking requirements may be decreased according to one or more of the following criteria within the overlay district:

i. Two to four parking spaces may be waived in exchange for the preservation of one established tree of 24 inches diameter or greater within a parking lot, up to 20 spaces in exchange for established trees per acre. The "Tree Protection Zone" is a minimum area equal to the area of a circle having a radius in feet equal to the tree diameter in inches (24-inch diameter of tree would require a 24-foot radius area). A tree protection zone must be incorporated into the site plan and preserved throughout construction. This area may serve more than one tree as long as the protection zone is adequately designated and maintained. These protected areas for larger trees can count toward the landscaping and parking lot island requirement of the town.

ii. A developer may choose the option of replacing one automobile space with four bicycle parking spaces, (or two spaces for eight bicycle parking spots, or three for 12) up to a maximum of 16 bicycle parking spaces in place of four automobile spaces.

iii. A developer may share parking through a joint-use agreement with another business or entity or group of businesses/entities. The number of spaces required for that business shall be determined by zoning administrator based on a negotiated joint-use agreement among businesses and the projected combined parking needs of the businesses involved.

5. *Landscaping.* All site plans shall design landscaping along the front of the building or parking lot adjacent to the right- of-way and in accordance with the town's landscaping regulations.

6. *Access Management and Property Ingress/Egress.*

a. All sites shall be developed in accordance with "access management" principles. Access management is the implementation of design practices intended to address organized and controlled traffic movement to minimize traffic conflict, provide efficient traffic flow, and to provide a more pedestrian-friendly development pattern. Access management should address the location and design of public street and driveway connections to the primary roadway, as well as promote site design that minimizes the total number of connections needed throughout the corridor.

b. In order to minimize traffic conflicts at intersections, property ingress/egress shall be a minimum of 100 feet from intersections of a corridor and public roads. If the property frontage is situated in such a way or is not long enough to accommodate this requirement, then the driveway shall be as far from the intersection as possible.

c. Along corridors, parcels may have a maximum of one curbcut for two-way traffic or two curbcuts for one-way traffic onto the corridor. Curbcuts shall be a maximum of 25 feet for a two-way driveway, or 30 feet if driveway is to be used for truck traffic of more than two axels, or a maximum of 20 feet for one-way driveways.

d. One-way driveways shall be separated by a curbed median or planted area of minimum ten feet in width and include pavement markings with directional arrows to indicate traffic direction. Signage may be placed within this median as long as it does not interfere with the line of sight of motorists or the NCDOT right-of-way.

e. Adjacent properties with parking lots greater than 15 spaces shall be connected and share driveways and establish joint-access agreements. Joint parking can be utilized to meet minimum parking requirements of the town. Adjacent parking lots of greater than 15 spaces are required to have interior connections to allow traffic flow within parking areas.

f. Service entrances and alleys may be developed in addition to other driveways. Shared use and joint access to service entrances and alley ways is encouraged among multiple businesses and developments. Such alleys shall be located in the rear of buildings and should connect to side roads wherever possible.

g. Where possible, driveways on corner lots should utilize side streets to funnel traffic toward three and four-way intersections that may be governed by stoplights.

7. *Sidewalks and Pedestrian Markings.*

   a. In addition to other pedestrian requirements provided in the pedestrian overlay, sidewalks are required along the corridor the length of property frontage and must be a minimum of five feet in width with a minimum two-foot buffer between the sidewalk and the back of curb.

   b. All curb-cuts and driveways shall include pedestrian markings of zebra stripes, textured asphalt stamping, or brick pavers or other material that visually designate the pedestrian thoroughfare and connects to the sidewalk.

8. *Loading, Storage, and Screening.*

   a. All loading and storage areas shall be located to the side and/or rear of all principle structures, except single-family or duplex residential structures, fronting the highway corridor. For corner lots, the side of the lot facing the more major thoroughfare shall be considered the front yard for the purpose of this requirement.

   b. All dumpsters shall be screened from any adjacent roadways and shall be located in the side or rear of buildings and comply with screening requirements of this ordinance.

   c. Mechanical equipment, utility meters, storage areas, trash enclosures, transformers, generators or other utility hardware attached to or on the building or ground shall be screened from the corridor with materials similar to the structure, or be located so as not to be visible from public view from the corridor.

9. *Signage.* All free-standing signage as allowed in the town's sign regulations, must be of monument style and incorporate some non-metal materials such as wood, brick or stone into the structure. Such signs may be lit through the use of external or internal sources only in accordance with the Town lighting regulations and shall not exceed 12 feet in height.

§ 2.04 Land Use Standards (Administrative and Special)

2.04.05 Limited Use Standards

A. **Generally**. Certain uses are permitted within 2.04.04, *Land Use Matrix*, which require additional standards to operate and function as a compatible use within a certain zoning district. Those uses are shown with an "L" in the table. These provisions do not apply to uses listed with a "P", which are permitted by right, or an "S", which are designated Special Use Permits required as listed in 2.04.07.

B. **Purpose**. The purpose of these standards is to ensure that a use generally deemed compatible with permitted uses in a given zoning district can be permitted with certain conditions placed on the use as denoted in this Section.

C. **Applicability**. An application is required for the establishment of a new limited use, a change to a limited use, or the expansion of a limited use that has not been approved.

D. **Specific Limited Uses**. In accordance with the references in 2.04.04, *Land Use Matrix*, the following provisions apply to the uses listed below:

1. *Beekeeping/Apiaries.* In accordance with the North Carolina Bee and Honey Act of 1977, the town permits up to five hives on a single parcel with the following restrictions:
    a. Hives shall be defined as in G.S. 106-635(15).
    b. The hive(s) are to be placed at ground level or securely attached to an anchor or stand. If the hive(s) are securely attached to an anchor or stand, the town may permit the anchor or stand to be permanently attached to a roof surface.
    c. The location of any hive(s) on the property is permitted to be regulated by the Act and as such shall be placed as follows:
        i. Hive(s) shall be setback no less than 50' from any property line.
        ii. Hive(s) shall be kept in rear yards only.
        iii. If the owner no longer maintains the hive(s), removal is required to protect the health, safety, and welfare of the public.
    d. In the event that a parcel is located in CR1, LI, or HI, bees may be kept as allowed under North Carolina law in an unlimited capacity as long as the operation and hive(s) are located at least 200 feet from any residential use or residential zoning district boundary, school, day care facility, or public park.
2. *Urban Chickens.*
    a. Chickens excluding all other forms of poultry may be kept on the premise of a detached single-family residence under the following conditions:
    b. No more than six (6) hens shall be allowed for each single-family dwelling.
    c. No birds shall be allowed in multifamily complexes, including duplexes.
    d. No roosters (males) shall be allowed.
    e. There shall be no outside slaughtering of chickens.
    f. Enclosures must be situated at least 15 feet from the neighboring residence.
    g. Enclosures must provide at least four (4) square feet per chicken.
    h. Enclosures must be kept in a neat and sanitary condition at all times, and must be cleaned on a regular basis so as to prevent offensive odors. Neat and sanitary shall mean a permanent solid roof, walls constructed primarily of chicken wire type material excepting the load bearing and door members, immediate removal of dead animals, and the removal of refuse that may attract vermin.
    i. Feed shall be stored in rodent proof containers.
    j. Enclosures and pens must be located in rear yards.
3. *Agriculture*. These regulations may affect property for agricultural purposes only as provided for in this section. This section does not limit regulation under this part with respect to the use of a farm property for non-farm purposes.
    a. Agricultural purposes include the production and activities as defined in these regulations and by North Carolina State Statutes as "bona fide farms" and related or incidental to the production of crops, fruits, honey, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market, excluding hog products,

whether or not the use is conducted on owned or leased property, and regardless if agricultural products are used for personal consumption or sale.

b. Animal livestock and poultry operations, including horses, sheep, cows, goats, or llamas, must comply with the Buncombe County Animal Control Ordinance and meet the following requirements:
   i. Maintain enclosures (corrals, fencing, paddocks) in good condition so that animals stay on property;
   ii. Protect perennial and intermittent streams from erosion and animal waste with stream exclusion systems, water delivery devices or other grazing management practices; and
   iii. Locate compost and feed storage areas at least 30 feet from property boundaries abutting residential uses and from perennial streams.

c. Maintain a 30-foot setback from the property line of an abutting residential use, for any structure, such as barns or stables but not including fencing.

d. Any lot used to maintain livestock shall be two acres or more. Livestock does not include fowl, such as chickens.

e. Not more than one animal unit shall be kept, maintained or stabled per 5,445 square feet (⅛ acre). For the purposes, of this section, one animal unit shall mean a goat, sheep, horse, cow, llama, alpaca, ostrich, or similar animal. Six chickens or similar poultry shall count as one animal unit.

f. The keeping of hogs is not permitted.

g. All livestock introduced onto a property where there is no pre-existing containment area (such as a fence, paddock, or enclosed pasture), except for chickens, shall be fenced so that they are no closer than 150 feet from an adjacent living unit. This shall not apply to residences constructed after the establishment of such livestock containment area. However, the containment area may not encroach further towards the newly established residence.

h. This section shall not apply to cats, dogs, rabbits, or similar household pets.

i. In the CB, NMU-8, and UR-8 districts agricultural uses related to livestock and animal husbandry of any type, with the exemption of household pets or chickens, are prohibited. Properties with allowable agricultural uses not related to animals, must comply to setbacks, driveway standards, and other guidelines that are applicable within those districts.

j. Structures for storage of farm or maintenance equipment and supplies, and similar items associated with agricultural uses are permitted subject to the accessory structure setbacks for their respective zoning districts and shall not cover more than 30 percent of the total lot area.

k. Any greenhouse in any district other than the industrial (HI-0. LI-8) or highway-business (HB-8) districts shall be treated as an accessory building and shall meet the towns' zoning guidelines, setback and building requirements of the district in which it is located. Within the central business district a greenhouse may serve as an accessory structure and must be constructed of rigid materials. A greenhouse is only allowed as a primary structure in the HI-0, LI-8, or HB-8 districts and must comply with all other district requirements. All commercial greenhouses must receive a certificate of compliance and occupancy.

l. In all districts, regulations regarding flood hazard prevention, stormwater management, signage and lighting of the town shall apply to all agricultural uses.

4. *Garden Markets.*

   a. Farm stands associated with garden markets shall be allowed as an accessory use in all districts.

   b. Tailgate sales are permitted as long as they do inhibit traffic flow or safety, and with the permission of the property owner.

c. Off-premises produce stands shall be allowed as long as the use is for less than four continuous months.

d. All farm stands shall not be located closer than ten feet to any side lot line unless a greater setback is required for the zoning district in which it is located or as directed by the zoning administrator for the purpose of traffic safety.

e. Signs for a farm stand or tailgate sales shall not be illuminated, nor have flashing lights, nor shall they exceed four square feet in area. Off-premises signs are not permitted.

5. *Secondary Dwellings.* Secondary dwellings may be located in a building separate from the principal dwelling subject to the following requirements:

a. Secondary dwellings shall meet the setbacks of the principal structure as set forth for the zoning district in which it is located.

b. Secondary dwellings shall be built to North Carolina Residential Building Code Standards.

c. The secondary dwelling size shall not exceed 50 percent of the square footage of the livable area of the primary structure or 1,100 square feet, whichever is less.

d. No secondary dwelling will be sited between the principal building and an adjacent public roadway, not including a private alleyway or driveway.

e. Only one secondary dwelling unit shall be permitted per zoning lot.

f. The exterior of the secondary dwelling will be of same style as the principal residence in terms of exterior material, siding, roof pitch, window detailing, roofing materials, and foundation or skirting appearance.

g. If a manufactured home, the secondary dwelling shall not be pulled up to or attached to the primary residence, and must meet the requirements for manufactured housing in this ordinance.

h. Adequate off-street parking shall be provided at a ratio of two cars per dwelling unit on the same lot.

i. If there will be no public sanitary sewer service to the secondary dwelling, the county health department shall approve a septic system prior to construction.

j. Lots with duplexes shall not be allowed a secondary dwelling.

6. *Home Occupations*.

a. Home occupations are permitted in all districts except in HI-0 where residential uses are considered a nonconforming use. However, within the HI-0 district, a home occupation may be integrated into a pre-existing residential structure in compliance with this chapter.

b. The home occupation must be clearly incidental to the residential use of the dwelling and must not change the essential residential character of the dwelling or the immediate neighborhood.

c. The intent of these regulations is to allow for home occupations throughout Black Mountain while minimizing the impact on neighbors and maintaining the same levels of noise, traffic, parking and other characteristics of the surrounding residential properties.

d. In no case shall any nonresidential use or home occupation consist of operations or conditions resulting in noise, odors, smoke, glare, dust, gases, excessive traffic, electrical or other radiation, or other characteristics of a type or to an extent which create a nuisance or hazard to adjacent or neighboring residential properties.

e. A home occupation may be conducted in an accessory structure.

f. No display of stock in trade which is sold on the premises shall be visible from outside the building. Catalog and internet products may be received and shipped from the premises to fulfill orders as

long as goods, products or commodities are stored within the home or an accessory structure customarily found in a residential district.

g. There shall be no outdoor storage or visible evidence of equipment or materials used in the home occupation, unless the equipment or materials are of a type and quantity that could reasonably be associated with the principal residential use.

h. In residential districts, business identification or advertising signs are only permitted if they are attached to the primary or secondary structure and shall not exceed four square feet. All other signage must conform to the town sign and district regulations.

i. Off-street parking needed to accommodate the home occupation shall be provided onsite but shall not exceed four spaces.

j. In residential districts, delivery vehicles serving the home occupation shall be restricted to the hours of 9:00 a.m. and 5:00 p.m.

k. Adult day care homes and child care homes shall provide care to no more than five unrelated persons and shall require an annual certificate of occupancy or safety inspection to ensure adequate structure and fire safety as well as documentation certifying compliance with all state and federal standards.

l. No one who resides outside of the residence may work in the home.

m. Only vehicles used primarily as passenger vehicles will be permitted in connection with the conduct of the home occupation.

n. A home occupation housed within the dwelling shall occupy no more than 25 percent of the total floor area of the dwelling, not to exceed 500 square feet.

o. Home occupations shall complete a home occupation application that includes zoning verification.

7. *Family Care Home.* In accordance with G.S. chs. 122C, 131D, and 160D, family care homes are deemed residential uses for zoning purposes subject to the following additional requirements:

   a. Each family care home shall be licensed by the North Carolina Department of Health and Human Services as required by State law.

   b. No family care home may be located within a one-half-mile radius of any other residential care home.

   c. No exterior signage is permitted.

8. *Residential Care Facility.* The State of North Carolina provisions for this use shall be considered as part of the review request. as long as definitions are clear and meet general statutes. check proximity rules and make sure it meets the state standards.

9. *All Other Group Living Uses.* The State of North Carolina provisions for this use shall be considered as part of the review request.

10. *All Day Care Uses.* These requirements apply only to child and adult day care services providing care for more than six clients at a time:

    a. Each day care shall be licensed or certified by the North Carolina Department of Health and Human Services required by state law.

    b. Child day care centers shall provide a fenced outdoor play area. The fence shall not be less than four feet in height.

    c. Day care centers shall provide locations for pick-up/drop off areas which do not impede traffic on town or state roads.

11. *Correctional Institution*. Correction institutions, including government owned or private, must meet the following:

a. All structures, outdoor exercise areas, or any other facilities associated with the use shall be setback a minimum of 500 feet from any adjacent property with an existing residential use or adjacent residentially zoned property.

b. Primary vehicular access to such use must be from a paved arterial or collector road.

12. *Recreation Services, Outdoor.*

13. *Zoo*. Any zoo in the Town of Black Mountain shall meet requirements in accordance with AZA (Association of Zoos and Aquariums) standards. If a zoo loses

14. *Airport*. Any airport in the Town of Black Mountain shall meet requirements in accordance with the Division of Aviation of NCDOT.

15. *Solar Farm.* To provide a setting for high tech power generation through solar panels in a solar farm setting, the following regulations shall be met:

a. Financial Surety. Prior to the issuance of a Zoning Compliance Certificate, the applicant must provide the Town with a performance guarantee as provided below. The amount of the guarantee shall be 1.25 times the estimated decommission cost minus the salvageable value, or $50,000, whichever is greater. Estimates for decommissioning the site and salvage value shall be determined by a North Carolina licensed engineer or a licensed contractor. It is the responsibility of the applicant to provide the Town with the certified cost estimate.

b. Types Permitted. The following types of performance guarantees are permitted:

c. Bond. A surety or performance bond that renews automatically, includes a minimum 6-day notice to the Town prior to cancellation, is approved by the Planning Director, and is from a company on the U.S. Department of Treasury's List of Certified Companies. A bond certificate must be submitted to the Town each year verifying the bond has been properly renewed.

d. Certified Check. A certified check deposited with the Finance Director, as escrow agent, who will deposit the check in an interest bearing account of the Town, with all interest accruing to the applicant. Funds deposited with the Finance Director will be returned when the solar farm is decommissioned and any necessary site restoration is completed.

e. Letter of Credit. A no-contest irrevocable bond letter of credit from a banking corporation licensed to do business in the State of North Carolina. The terms of the letter must include the absolute right of the Finance Director to withdraw funds from the bank upon certification by the Town Manager that the terms and conditions of the performance guarantee have been breached. The letter must be valid up to 12 months from the date the performance guarantee was approved.

f. Time Effective. The full amount of the bond, certified check, or letter of credit must remain in full force and effect until the solar farm is decommissioned and any necessary site restoration is completed.

g. Release from Financial Surety. The land owner or tenant must notify the Town when the site is abandoned for the financial surety instrument to be considered released and no longer held by the Town.

h. Site Restoration. Each approved solar farm must have a decommission plan submitted by the applicant ensuring the following:

i. Plan Requirements. The applicant must include a detailed decommission plan that describe the anticipated life of the solar farm, the estimated decommissioning costs in current dollars, the method for ensuring that funds will be available for decommissioning and restoration, and the anticipated manner in which the solar farm project will be decommissioned and the site restored.

ii. Time Requirement. Following a continuous 6 month period in which no electricity is generated, the permit holder will have 6 months to complete decommissioning of the solar farm. Decommissioning includes removal of solar panels, buildings, cabling, electrical components, and any other associated facilities below grade as described in the approved decommissioning plan.

iii. Installed Improvements Maintenance Standards. Landscape buffer/screens, ground cover, security fences, gates, and warning signs must be maintained in good condition until the solar farm is dismantled and removed from the site.

i. Fire Safety. A "kill switch" sufficient to take each series of panels out of service and which is accessible by fire safety personnel at any time shall be installe Such shall be incorporated in the plans and fire safety personnel shall receive a briefing prior to activation.

j. Fencing. A security fence equipped with a gate and a locking mechanism must be installed at a minimum height of 8 feet along all exterior sides of the solar farm.

k. Underground lines. Power transmission lines must be located underground to the extent practical.

l. Voltage Warning Signs. A warning sign concerning voltage must be placed a the main gate to include the name of the solar farm operator and locate phone number for the solar farm operator in case of an emergency.

m. Authorization from local utility company. The applicant must provide written authorization from the local utility company's grid.

n. Erosion Control. Erosion control measures must be installed at construction entrances in order to minimize off-site soil damage. Existing grass must be maintained in perpetuity sufficient to prevent erosion.

o. Parking During Construction. All construction parking must be located outside of the right-of-way.

p. Permits Required. The applicant must secure all necessary approvals and/or permits from NCDOT for the access permits for project entrances prior to issuance of a Zoning Permit.

q. Glare. All solar panels must be constructed to minimize glare or reflection onto adjacent properties and adjacent roadways and must not interfere with traffic or create a safety hazard.

r. Buffering and Screening. A landscape buffer/screen along all exterior sides of the security fence must consist of:

i. On-site mature vegetation exists at a minimum height of 10 feet and depth of 75 feet between the security fence and adjacent property including rights-of-way; or

a. A single row of evergreens in combination with mature vegetation installed at a height of 5 feet achieving opaqueness and a minimum height of 10 feet in 5 years; or

b. A double row of off-set evergreens absent mature vegetation, installed at a height of 5 feet achieving opaqueness and a minimum height of 10 feet in 5 years; or

c. A berm combined with evergreen vegetation installed at a height of 5 feet achieving opaqueness and a minimum height of 10 feet in 5 years.

s. Minimum Setbacks. All structures, except the security fencing, must meet a 50-foot front, rear, and side yard setback measured from the appropriate rights-of-way or property line. All structures, except the security fencing, must meet a 50-foot front, rear, and side yard setback measured from the appropriate rights-of-way or property line.

16. *Tattoo and Body Piercing.*

a. No tattoo parlor or body piercing studio shall be located within 500 feet, as measured in a straight line from property line to property line, of:
    i. Any other tattoo parlor or body piercing studio,
    ii. A church,
    iii. A public or private elementary or secondary school, child day care or nursery school,
    iv. A public park,
    v. Residentially zoned or residentially used property, or
    vi. Any establishment with an on-premises ABC license.
b. Ear piercing, as a principal or accessory use, shall not be subject to this classification and these provisions.
c. Tattoo and/or body piercing operations shall not be considered as customary home occupations.

17. *Boarding House.*
    a. There shall be only one kitchen, a common dining room or study area, and no dining facilities or kitchens in the lodger's rooms where meals may be prepared and served.
    b. Boarding or rooming houses exclude hotels, motels, group homes, bed and breakfast homes and bed and breakfast inns.
18. *Short Term Rental.* WAITING ON THIS FOR NOW.
19. *Vaping and Tobacco Shop.*
    a. No vaping or tobacco shop shall be located within 500 feet, as measured in a straight line from property line to property line, of:
        i. Any other vaping or tobacco shop,
        ii. A church,
        iii. A public or private elementary or secondary school, child day care or nursery school,
        iv. A public park,
        v. Residentially zoned or residentially used property, or
        vi. Any establishment with an on-premises ABC license.
    b. Vaping and Tobacco shop operations shall not be considered as customary home occupations.
20. *Heritage Crafts*. Makers of heritage crafts shall be allowed as a business or home occupation as long as the use is not activity or materials involved are not prohibited in any way by the State of North Carolina for use within a residence or residential area.
21. Mobile Food Vendor. not a lot of support to change them. one application so far. a lot of existing ones that just pop up. Vibe is that we are going to be very supportive of these as an economic development thing. maybe in temporary uses also- there could be a way to regulate this there.
22. *Mobile Food Vendor Court.* Mobile food vendors must have written permission from the property owner to operate on private property.
23. *Neighborhood Fueling Facility.* Neighborhood fueling facilities are provided to provide fueling services be it gas, electric, or other fuel, within mixed-use districts. These types of business operations must be compatible with a residential area in terms of design, lighting and hours of operation, and regulations of the district in which it is located and shall also comply with the following requirements:
    a. Must cease operations between the hours of 11:00 p.m. and 7:00 a.m.
    b. Must provide adequate two points of ingress/egress for vehicles, and adequate space for fueling.

c. Must be of a design and building material that is in character with the surrounding neighborhood.

d. Signage must be of a monument style and be less than ten feet tall.

2.04.06 Conditional Zoning Administration

A. **Purpose**. In addition to the standards establishing conditional zoning in 2.02.02, the following shall govern the process.

B. **Timing and Submittal of Application**. All applications for conditional district rezoning shall be submitted to the planning and development 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. Application forms are available through the on-line portal and on the town's website.

C. **Content of Application**. Every application for conditional zoning shall include, at a minimum, 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.
2. *Density and Summary.* Proposed total density and a summary of the total land area devoted to each type of general use of land;
3. *Uses*. A full list of the proposed uses consistent in character with the underlying zoning district, whether permitted by right or conditionally;
4. *Development Schedule.* A proposed development schedule if the development is to proceed in phases;
5. *Variation from Base Zoning*. Identification of any required variation from existing regulations of the underlying base zoning district;
6. *List of Conditions*. A list of proposed conditions, if any;
7. *Names*. The names of all property owners and existing land uses within 200 feet of the boundary of the subject property.

D. **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.

E. **Technical Review Required**. Every application for conditional district zoning shall conform to the technical review requirements set out in this ordinance.

F. **Planning Board Review Required.** Following the required technical review, the application shall be placed on the agenda for consideration at the next regularly scheduled planning board meeting.

G. **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.

H. **Public Hearing Required.** Following consideration by the planning board, the application shall be forwarded to the Town Council for public hearing.

I. **Notice of Hearing Required.** Public notice of the public hearing shall be posted, advertised, and mailed as follows:

1. *Posting*. 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. *Advertisement*. 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. *Mailing*. 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.

J. **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.

K. **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.

L. **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.

M. **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.

N. **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 provisions in this ordinance.

2.04.07 Special Use Permits

A. **Generally**. Review of a Special Use Permit is a quasi-judicial procedure whereby the Board of Adjustment verifies that a special use, as noted in 2.04.04, Land Use Matrix, complies with the requirements of this UDO and is appropriate for the location in question.

B. **Purpose**. The purpose of a Special Use Permit review is to ensure that a use generally deemed incompatible with permitted uses in a given zoning district can be considered for approval with certain conditions placed on the use as denoted in this Section.

C. **Applicability**. An application is required for the establishment of a new special use, a change to a special use, or the expansion of a special use that has not been approved.

D. **General Criteria**. In determining whether to approve, approve with conditions, or deny a special use, the Board of Adjustment shall consider any applicable provisions of this Section in making its final decision and shall consider the following general criteria for each use below in addition to specific standards listed per use:

1. *Conformity*. The proposed special use will be in harmony with the area in which it is to be located and in general conformance with the Comprehensive Plan;
2. *Ingress and Egress*. Adequate measures will be taken to provide ingress and egress to minimize traffic hazards and traffic congestion on the public roads;
3. *Nuisances*. The proposed use will not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas;
4. *Orderly Development*. The establishment of the proposed use will not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district;
5. *Health, Safety, and Welfare*. The establishment, maintenance, and operation of the proposed use will not be detrimental to or endanger the public health, safety, or general welfare; and
6. *Other Provisions*. The proposed use complies with all other applicable provisions of this UDO.

E. **Alteration to Approved Special Use Permits.**

1. *Minor Modifications.* Specific minor modifications to special use permits that do not involve a change in use or density may be reviewed and approved administratively include the following:
   a. Reductions in signage or square footage;
   b. Increases in landscaping, open space, or setbacks;
   c. Reorientation of structures that have an impact on the internal site only and do not position service entrances or rear facades alternatively from their original orientation; and
   d. Realignment of approved ingress and egress as required by NCDOT or the Town of Black Mountain to better facilitate traffic safety.
2. *Major Modifications*. Any other modification of a special use permit shall follow the same process for approval as is applicable to the approval of a Special Use Permit. If multiple parcels of land are subject to a Special Use Permit, the owners of individual parcels may apply for permit modification so long as the modification would not result in other properties failing to meet the terms of the Special Use Permit or

regulations. Any modifications approved apply only to those properties whose owners apply for the modification.

F. **Specific Special Uses.** The following specific special uses shall be reviewed by the Board of Adjustment in accordance with 2.04.04, Land Use Matrix, with provisions applied. If there are no specific standards listed below with a Special Use, they are permitted without pre-set conditions if the Special Use Permit is approved. The Board may include additional restrictions for any use below:

1. *Previous Legal Conforming Uses.* Special Use Permits may be issued on a case-by-case basis for uses that became legal non-conforming upon the adoption of the Town of Black Mountain Unified Development Ordinance effective _____. Use must have been continuous and in good standing with the Town of Black Mountain for application to be considered.
2. *Multifamily Dwellings.*
    a. Where two or more multi-family residential buildings are constructed under single ownership, whether simultaneously or at different times, the entire parcel of land occupied by such multi-family residential buildings shall be considered one lot and parking spaces and usable open space will continue to be available in the same proportions to all occupants of the buildings on the lot.
    b. Minimum horizontal distance between any buildings or between any building and any lot line (other than a street right-of-way), shall be 25 feet.
    c. Solid waste storage facilities shall be provided either in the form of a screened and accessible bulk container or individual containers for each dwelling unit. When used, individual containers shall be screened, uniform in appearance, marked with the number of the dwelling unit they serve, and provided with locking lids.
    d. Structure(s) must meet all general requirements for the district except that the board of adjustment may require a lesser or greater front setback to harmonize with surrounding structures.
    e. Landscaping consisting of grass, trees and ornamental shrubs shall occupy no less than five percent of the total lot area. The landscaping shall be done in addition to any required screening or buffer. The location and type of landscaping shall be shown on the site plan.
    f. The architectural style, surface treatment and placement on the lot of the proposed structure shall be done in a way that is in harmony and in character with the surrounding properties and the neighborhood as a whole.
    g. The plan shall provide for internal pedestrian circulation and connections to public rights-of-way, existing sidewalks, transit stops or greenways consistent with town construction specifications.
    h. A clearly defined entrance to the parking area shall be provided of no more than 24 feet in width. Direct access to individual parking spaces from public rights-of-way shall not be allowed.
    i. Parking shall be provided at a minimum rate of two spaces per dwelling unit. No grade within the parking area or access lanes shall exceed 14 percent.
3. *Cottage Housing Development.*
    a. The purposes of this type of development and these accompanying guidelines are to:
        i. Provide a housing type that responds to changing household sizes and ages (e.g., retirees, small families, single person households);
        ii. Provide opportunities for ownership of small, detached dwelling units;
        iii. Encourage creation of more usable open space for residents of the development through flexibility in density and lot standards;

iv. Preserve a housing type of small, free-standing cabins and cottages, a housing style that has historically existed in Black Mountain since its development as a retreat and vacation destination and to provide guidelines to ensure compatibility with surrounding land uses; and

v. To accommodate and encourage new types of housing options such as "Katrina Cottages," and free-standing structures of small footprint that are generally more affordable, energy efficient and sensitive to the land.

b. Applicability. A cottage is a small, detached dwelling unit, not greater than 1,100 square feet in total floor area that may be developed at a density greater than the underlying zone. More than two cottages may occupy a single lot and may be owned separately. A cottage development may be developed in any zoning district except for HI-0.

c. Density. Cottage housing developments shall contain a minimum of two free-standing structures located in a cluster to encourage a sense of community among the residents.

d. General Design Requirements. In addition to the general SUP application requirements, the following guidelines shall be met:

i. Setbacks for all structures from the adjacent property lines along the perimeter of the site shall comply with all setback requirements of the district in which the development is located.

ii. The minimum distance between structures, including accessory buildings, shall be ten feet, and must have off-set windows and all fire safety codes related to building proximity and fire rated walls shall be met.

iii. The maximum built-upon area, including parking, driveways and buildings, shall be equal to or less than 66 percent of the total land area for the lot.

iv. Maximum height for cottages shall be 35 feet and the maximum height for accessory structures shall be 18 feet. All parts of the cottage roof above 18 feet shall be pitched.

v. Cottages must have a stoop or front porch that shall have a roofed porch at least 80 square feet in size with a minimum dimension of eight feet on any side.

vi. A pitched roof design is required for all parking structures.

vii. Cottages must not exceed 1,100 square feet of enclosed, habitable space. Cottage areas that do not count toward the total floor area calculation are:

(A) Unheated storage space located under the main floor of the cottage.

(B) Architectural projections such as bay windows, fireplaces or utility closets not greater than 18 inches in depth or six feet in width.

(C) Attached roofed porches.

(D) Detached garages or carports.

(E) Spaces with a ceiling height of six feet or less measured to the exterior walls, such as in a second floor area under the slope of the roof.

viii. Accessory buildings and detached or attached garages or carports shall not exceed 200 square feet in size, shall match the architecture of the cottages in style and material, and shall not be used for residential purposes.

ix. Parking spaces may be spread out through the development connected to each cottage, clustered in a shared parking lot or some combination thereof at a minimum ratio of two spaces per unit; clustered parking for more than six vehicles must be screened from public streets and adjacent residential uses by landscaping or architectural screening.

x. Driveways, parking areas, and any common open space, parks, or stormwater management facilities, shall be considered common areas and must be maintained by a homeowners' association.

xi. The total square foot area of a cottage dwelling unit may not be increased. A note shall be placed on the title to the property for the purpose of notifying future property owners that any increase in the total square footage of a cottage is prohibited for the life of the cottage or duration of cottage regulations.

xii. Common area shall be outside of wet stormwater ponds, wetlands, streams, lakes, and sensitive areas and maintained. Private open space shall provide a private area around the individual dwellings to enable diversity in landscape design. Requirements:

(A) Common open space shall be a minimum of 400 square feet per cottage, abut at least 50 percent of the cottages in a cottage housing development, and have cottages abutting on at least two sides.

(B) Private open space shall be a minimum of 300 square feet of private, contiguous, usable space adjacent to each dwelling unit, for the exclusive use of the cottage resident. It shall be oriented toward the common open space as much as possible or in the rear or side yard areas with no dimension less than ten feet.

xiii. An existing detached or attached single-family dwelling that is incorporated into a cottage housing development as a residence and is nonconforming with respect to the standards of this section shall be permitted to remain on a site used for a cottage housing development. However, the extent of the non-compliance may not be increased unless the proposed change is determined by the zoning administrator to be consistent in character, scale and design with the cottage housing development. If the existing dwelling meets the requirements of this section with regard to size and is able to conform to other site standards, it may be counted as a cottage in the density calculation for the site. If the existing dwelling does not meet the size limitation for a cottage, then it shall count as one standard size dwelling.

4. *PUD- Residential.* ***Carry over from existing ordinance.***
5. *PUD- Commercial.* ***Carry over from existing ordinance.***
6. *Congregate Care Facility.* ***These are difficult to get approved by the state. Do you want additional requirements?***
7. *Nursing Care Institution.* ***These are difficult to get approved by the state. Do you want additional requirements?***
8. *Campground.* ***Carry over from existing ordinance.***
9. *Recreational Vehicle Park.* ***Carry over from existing ordinance.***
10. *Industrial Park Development.* In addition to the general SUP application requirements, the following guidelines shall be met unless the industrial park involves the redevelopment of an existing commercial, industrial, or manufacturing site or "Brownfield" where pre-existing conditions may require a variance from these requirements:

a. Industrial park developments must maintain the required setbacks for the district at their perimeter boundary. Driveways or parking may encroach into the setback, however a ten-foot landscaped or grassed buffer must be maintained along public roadways at all times. Sidewalks or greenways may be included in this ten-foot-wide area as indicated on the pedestrian master plan.

b. Sites are required to finish all grades and sites with grass and other approved landscaping and landscaping is approved as part of the site plan review and a condition of a final occupancy permit.

Landscaped areas may contribute to the stormwater management plan in accordance with the town's phase II stormwater ordinance as applicable.

c. All parking must be improved with hard surface materials and incorporate stormwater management that retains and treats a 24-hour, one-year storm unless otherwise approved under the town's phase II stormwater ordinance requirements.

d. Lots must be designed to maximize access and safety. Adjacent developments shall share access points to the public roadway and parking wherever practicable and shall be designed so as to take advantage of existing traffic lights.

e. All sites are required to provide screening for outdoor storage areas and dumpsters which are visible from the public roadway. Outdoor storage must be identified on the industrial park plan and the screening to be used shall be specified. Screening requirements may be met with a minimum of a six-foot opaque fence or wall, or with a ten-foot buffer of evergreen trees which shall meet or exceed six feet in height within one year of the certificate of occupancy being granted.

f. Loading docks are required to be placed in side or rear yards or within the interior of the property. No loading docks shall face the street unless screened by other parts of the building, screening and landscaping.

g. Out-buildings or future expansion areas shall be designated on the plan with building envelopes. Provided that construction takes place within the approved building envelope, construction may proceed upon issuance of a building permit. Otherwise, expansion or amendment to the original plan shall require approval of the board of adjustment as an amendment to the SUP.

h. A building permit and certificate of occupancy is required whenever a unit of the park changes ownership, tenancy, or use, to ensure that all building and fire safety codes are met.

i. All other requirements of the zoning district in which the development is located shall be met, including stormwater management and lighting requirements of the town.

11. *Salvage Yard/Junkyard.*

    a. In addition to general SUP application requirements, a site plan must show the distance from the nearest edge of the right-of-way of any interstate or primary highway, or a North Carolina route.

    b. Requirements:

        i. The proposed site shall be not less than one nor more than five acres;

        ii. The proposed site shall not be located nearer than 30 feet to any residence nor within one-half mile of another junkyard, measured from the boundary of the junkyard as shown in the approved site plan to the nearest residential structure.

        iii. Screening of a minimum eight-foot-high fence and evergreen barrier shall be required along any boundary abutting a residential lot or residentially zoned lot or public right-of-way.

12. *Hunting and Game Preserve (Commercial)*. No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.

13. *Pet Care Service (with outdoor kennels).*

    a. Minimum Distance from Residential. Any building used for the boarding of animals shall be located at least 200 feet from any residential use or residential zoning district boundary, school, day care facility, or public park, other than a dog park, measured as a radius from property lines of the limited use.

b. Sound-Proofing. Where the site is located adjacent to a residential use or zoning district boundary, all buildings used for the care or boarding of animals shall be fully enclosed and sound-proofed so animal noises will not be audible from a property line.

c. Hours for Outdoor Dog Runs and Animal Exercise Areas. Where the site is located adjacent to a residential use or zoning district boundary, outdoor dog runs shall not be used, and no other outdoor animal exercise shall occur, between the hours of the Town of Black Mountain Noise Ordinance requirements.

d. Front Yard Maintenance. The front yard area shall not be used for animal exercise, and all yards shall be cleared daily of any animal waste.

e. Screening of Outdoor Dog Runs and Animal Exercise Areas. Any outdoor dog runs or animal exercise areas visible from a public right-of-way or adjacent residential use or zoning district boundary shall be enclosed by a solid masonry or concrete wall or an opaque fence having a minimum height of five feet.

f. No Nuisance Created. The use shall not create or cause any perceptible noise or odors that constitute a public or private nuisance to neighboring properties.

14. *Cemeteries & Mausoleums*. No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.

15. *Country Club and Golf Course.* No special requirements if approved. Additional requirements may be added as part of the review. Restaurants, Pro shops, and other accessory uses customarily associated with such use may be allowed as part of an approved Special Use permit. The State of North Carolina provisions for this use shall be considered as part of the review request.

16. *Park-and-Ride Facility/Transit Terminals.* No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.

17. *Amateur Radio Antenna.* The Town, based on health, safety, or aesthetic considerations that regulates the placement, screening, or height of the antennas or support structures of amateur radio operators will reasonably accommodate amateur radio communications and must represent the minimum practicable regulation necessary to accomplish the purpose of the Town. The Town may not restrict antennas or antenna support structures of amateur radio operators to heights of 90 feet or lower unless the restriction is necessary to achieve a clearly defined health, safety, or aesthetic objective of the Town.

18. *Dance Halls, Night Clubs, Private Clubs, Bars, Lounges, Taverns, Pubs*. A special use permit shall be required for a use in this category. This review shall also establish if business hours may extend past 11 pm or prior to 7 am.

19. *Funeral Home and/or Crematorium*. No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.

20. *Liquor Sales (ABC).* No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.

21. *Sexually Oriented Businesses*. These businesses should be located in specific areas of the Town which are a specified distance from sensitive uses such as residences, parks, religious institutions and schools, irrespective of whether physical barriers are present. This is necessary to provide certainty to the residents and sexually oriented business operators with respect to potential adult use sites.

    a. Authorization. These regulations are authorized by NCGS § 160D-902.

b. Applicability. The provisions of this Section apply to any sexually oriented business/adult establishments.

c. Size. The gross floor area is limited to 3,000 with all business activity conducted inside.

d. Sleeping Quarters. No sleeping quarters shall be permitted, except for an adult motel.

e. Parking. No enclosed or underground parking is permitted.

f. Locational Standards.

i. Other SOBs. No sexually oriented business or adult establishment shall be located within 2,000 feet of any other sexually oriented business or adult establishment. There shall be one per parcel.

ii. Sensitive Uses. No sexually oriented business or adult establishment shall be located within 2,000 feet of a public or private elementary or secondary school, Day Care use category, public or private recreation center, religious institution, or a public park.

iii. Residentially Zoned or Used Property. No sexually oriented business or adult establishment shall be located within 2,000 feet of any residentially zoned or used property.

iv. ABC Licensed Facility. No sexually oriented business or adult establishment shall be located within 2,000 feet of a business with an active ABC License.

v. Protected Corridors. ***MAKE LIST.***

g. Signs and Displays. Signs shall be regulated in accordance with 156.60, except that no sexually oriented printed material, slide, video, photograph, written text, live show, or other sexually oriented visual display shall be visible from outside the walls of the establishment, nor shall any live or recorded voices, music or sounds be heard from outside the walls of the establishment.

h. Minimum Distances Not Eligible for Variance. The minimum separation distances within this section are not eligible for variances.

22. *Fuel Sales.* No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.

23. *Manufactured and Modular Home and Storage Building Sales.* No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.

24. *Resource Extraction Uses/Mining.* No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.

25. *All Other Waste Related Service.* No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.

26. *Additional Accessory Structures.* Special Use permits may be issued by the Board of Adjustments for additional residential accessory buildings exceeding guidelines when property exceeds 2 acres.

G. **Additional Requirements from the Board of Adjustment.** In granting a Special Use Permit, the Board of Adjustment may impose additional restrictions and requirements upon such Special Use Permit as it may deem necessary in order that the purpose and intent of this UDO are served as long as they follow the limitations of X and have the statutory authority to do so.

CHAPTER 9: NONCONFORMITIES

Contents:

§ 9.01 Classification of Nonconformities

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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.

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.

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.

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 aver 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.

CHAPTER 10: ENFORCEMENT AND REMEDIES

Contents:

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§ 10.01 Enforcement Procedures

10.01.01 Purpose

A. **Purpose**. The purpose of this Section is to set out the procedures for enforcing this UDO, and the remedies available to the Town for violations of this UDO.

B. **Applicability with Law.** These development regulations shall be enforced by the town council and administrative staff through their authority to abate violations, and to enjoin, restrain, and prosecute any person violating these development regulations pursuant to North Carolina law.

C. **Establishes Procedures**. This section establishes the procedures by which the town seeks corrections of violations of these development regulations. It also sets forth the remedies and penalties that apply to violations of these development regulations. The provisions of this section are intended to encourage the voluntary correction of violations.

10.01.02 Applicability

A. **Compliance Required**. No person may use, occupy or develop land, buildings or other structures, or authorize or permit the use, occupancy or development of land, buildings or other structures, except in accordance with all the provisions of this UDO.

B. **Continuation of Prior Enforcement Actions**. Nothing in this UDO shall prohibit the continuation of previous enforcement actions undertaken by the Town pursuant to regulations in effect before the effective date of this UDO. Enforcement actions initiated before the effective date of this UDO, and amendments hereto, may be continued to completion or settlement under the terms of the regulations in effect prior to the effective date of this UDO.

10.01.03 Right of Entry

Under the powers of this article, the enforcement officers of the planning and development department, including the building inspector, fire marshal, zoning administrator and planning director, shall have the authority to enter onto land within the town's jurisdiction to inspect for violations of this code or to investigate complaints as follows:

A. **Inspection**. Entry shall be for the purpose of inspection to ensure compliance;

B. **Hours**. Inspection shall be performed during business hours, unless an emergency exists; and

C. **Permission**. Inspection shall be made only after:

1. Contact and permission is granted by the owner or tenant; or
2. An order from a court of competent jurisdiction.

10.01.04 Violations

A. **Complaints.** Whenever a violation of these development regulations occurs or is alleged to have occurred, any person may file a written complaint documenting the alleged violation and submit it to the planning and development department for investigation by the zoning administrator. The planning and development department shall supply complaint forms.

B. **Activities Constituting Violations**. Unless otherwise expressly stated by the NCGS §160A-175, any violation of this UDO, including but not limited to the following, will be subject to the remedies and penalties provided for in this Section:

1. To place any use, structure, or sign upon land that is subject to this UDO without all of the approvals required by this UDO.
2. It is a Class I misdemeanor to subdivide land in violation of this UDO or transfer or sell land by reference to, exhibition of, or any other use of an unapproved plat. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The Town may bring an action for injunction of:

a. Any illegal subdivision;

b. Transfer of land;

c. Conveyance of land; or

d. Sale of land.

3. To file or record a plat of subdivision within the jurisdiction of this UDO without receiving approval that has not been approved in accordance with this UDO.

4. To erect, construct, reconstruct, remodel, alter, maintain, move, or use any building, structure, or sign, or to engage in development or subdivision of any land in contravention of any zoning, subdivision, sign, or other regulation of this UDO. This section is not intended to address legal nonconforming uses or structures. Chapter 9, *Nonconformities*, regulates expansions or other alterations to legal nonconforming uses or structures;

5. To engage in any subdividing, development, construction, remodeling, or other activity of any nature upon land that is subject to this UDO without all of the approvals required by this UDO;

6. To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with the terms and conditions of any permit, approval, certificate, or other forms of authorization required in order to engage in such activity;

7. To violate, by act or omission, any term, condition, or qualification placed by a decision-making body upon any permit or other form of authorization;

8. To reduce or diminish any lot area so that the setbacks or open spaces shall be smaller than prescribed by this Ordinance;

9. To increase the intensity of use of any land or structure, except in accordance with the procedural requirements and substantive standards of this UDO;

10. To remove, deface, obscure, or otherwise interfere with any notice required by this UDO;

11. To fail to remove any sign or other improvement installed, created, erected, or maintained in violation of this Ordinance, or for which the permit, approval, permission, or other authorization has lapsed. This section is not intended to address legal nonconforming uses or structures. This UDO regulates expansions or other alterations to legal nonconforming uses or structures; and

12. To otherwise undertake any development or to establish any use in a manner which does not comply with this UDO.

C. **Provision of Warning.** On determining that a violation exists, Staff may issue a written warning. The written warning shall which shall include a description of the violation and the actions necessary to correct the violation, and invite the person responsible for the violation to meet with the enforcement official to discuss the violation and how it may be corrected. The warning shall be delivered by personal delivery, electronic delivery, or first-class mail to the responsible party. If the violation creates an imminent risk of harm to persons or property, the enforcement official shall not provide a warning, and shall proceed immediately to issue a notice of violation as set out below.

D. **Notice of Violation**.

1. *Delivery of Notice*. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice may also be posted on site.

2. *Certification of Notice*. The person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud.

3. *Notice Contents*. The notice shall contain the violation description, citation of the Section, Subsection, or Paragraph of this UDO being violated, address or location of property, date of noticed infraction, steps to correct, and the deadline to correct the infraction.

E. **Timeframe for Violation to be Corrected**. Failure to correct the violation within 90 days from the date of mailing the letter shall constitute an offense.

F. **Correction**. Correction of the violation in the manner stipulated by the violation notice at any point during this enforcement process, shall deem the notice null and void, and enforcement activity shall cease.

G. **Existing Violations**.

1. *Generally*. Any violation of the repealed provisions of the Town's Code of Ordinances that this UDO replaced shall continue to be a violation under this UDO and shall be subject to the penalties and enforcement set out in this Ordinance unless the use, development, construction, or other activity complies with the provisions of this UDO.

2. *Fines and Penalties*. Payment of fines shall be required for any civil penalty assessed under the repealed provisions of the Town's Code of Ordinances, even if the original violation is no longer considered a violation under this UDO.

H. **Penalty**. In addition to the other remedies cited in this UDO for the enforcement of its provisions, and pursuant to North Carolina General statute 16, the regulations and standards in this UDO may be enforced through the issuance of civil penalties by the administrator.

1. *Subsequent Citations*. Subsequent citations for the same violation may be issued by the Administrator if the offender does not pay the citation (except as otherwise provided in a warning citation) after it has been issued unless the offender has sought an appeal to the actions of the Administrator through the Board of Adjustment.

2. Once the ten day warning period has expired, each day which the violation continues shall subject the violator to additional citations to be issued by the Director.

I. **No Additional Approvals**. No additional land use approvals will be issued for properties with existing, unpaid zoning violations.

10.01.05 Owner Responsibility

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

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

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

C. The holder of a development approval.

§ 10.02 Remedies

10.02.01 Civil Liability

A. **Civil Liability**. The Code Enforcement Officer:

1. Has the authority to issue a citation and deliver it to a person believed to be committing a civil violation; and
2. Is declared to be the official with the duty of enforcing this UDO with respect to:
    a. Appearing and testifying in any trial held with respect to a citation;
    b. Notifying the court of competent jurisdiction of any notice of intention to stand trial or any request for adjudication when a fine is not paid after formal notice has occurred;
    c. Mailing formal notices of the violation to persons who do not give notice of intention to stand trial or pay the established fine within the time set in the citation; and
    d. Receiving and filing a copy of each original citation and any fines or notices of intention to stand trial.

B. **Injunction and Abatement**. This UDO may be enforced by any means or any remedy provided for in NCGS §160A-175 and §160D-1208. The Administrator, with assistance from other applicable Town staff members, may enforce any violation of this UDO prior to, and without, judicial process by:
1. *Withhold Permit*. Withholding all permits or approvals if there is:
    a. A repeat violation of this UDO; or
    b. There is a condition or qualification of approval granted by the Planning Board or the Town Council that has not been met.
    c. The Staff may deny or withhold all permits, certificates, or other forms of authorization on any land or structure or improvements owned or being developed by a person who owns, developed, or otherwise caused an uncorrected repeat violation of this UDO. This provision shall apply whether or not the property for which the permit or other approval is sought is the property in violation.
2. *Revoke Permits*. Any Development Permit or other form of authorization required under this UDO may be revoked for any reason.
3. *Stop-Work Order*. With or without revoking permits, Staff may stop work on any land or structure on any land on which there is an uncorrected violation of a provision of this UDO or of a permit or other form of authorization issued hereunder, in accordance with the power to stop work pursuant to NCGS §160D-404. The stop order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons, and the conditions under which the work may be resumed.
4. *Revoke Plan or Approval*. Where a violation of this UDO involves a failure to comply with approved plans or conditions to which the approval of such plans was made subject, Staff may, upon notice to the applicant and other known parties in interest (including any holders of Building Permits affected), revoke the plan approval pursuant to NCGS 160D-403(f). Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.

C. **Other Remedies**. The Staff, Town Council, Planning Board, and the Board of Adjustment shall have such other remedies as are, and as may be from time to time, provided by North Carolina law provided in North Carolina General Statue 160A-175, including, but not limited to, all appropriate equitable remedies issued from a court of competent jurisdiction as provided in General Statute 160A-175 and particularly the remedy of injunction and order of abatement as allowed by North Carolina General Statue 160A-175.for the violation of zoning, subdivision, sign, or related UDO provisions.

10.02.02 Criminal Penalty

Should we work these in to the above section?