



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 March 27, 2023
Date: March 17, 2023

The **Town of Black Mountain Planning Board** will meet on **Monday, March 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 February 23, 2023, and February 27, 2023;
3. Rezoning Request for Chinquapin Hill; and
4. UDO Sections for Review.

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

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

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



PUBLIC NOTICE **AVISO PÚBLICO**

BLACK MOUNTAIN PLANNING BOARD

REGULAR MEETING **REUNIÓN ORDINARIA**

Monday, March 27, 2023, at 6:00 p.m.
Lunes 27 de marzo de 2023, a las 6:00 p.m.

The Black Mountain Planning Board will meet for their regular monthly meeting on **Monday, March 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 marzo 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 03/01/2023

www.townofblackmountain.org



**Planning Board Regular Meeting
March 27, 2023**

PROPOSED AGENDA

I. CALL TO ORDER

- **Welcome**
- **Determination of Quorum**

II. ADOPTION OF AGENDA

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

III. ADOPTION OF MINUTES

- **Motion:** To adopt the minutes of February 23, 2023, and February 27, 2023, as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Rezoning request for Chinquapin Hill
- UDO Sections for Review

VI. PUBLIC COMMENT

VII. COMMUNICATION FROM PLANNING BOARD

VIII. COMMUNICATION FROM STAFF

IX. ADJOURNMENT

TOWN OF BLACK MOUNTAIN PLANNING BOARD

The Black Mountain Planning Board held a workshop meeting on Thursday, February 23, 2023, at 6:00 p.m. in the Board Room of Town Hall.

I. CALL TO ORDER

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

Pam Norton, Vice Chair
Joe Laudenslayer
Rick Early
Kathy Phillips
Chas Fitzgerald

Absent:

Chris Collins, Chair
Lauronda Teeple

Staff:

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

The meeting was called to order at 6:03 p.m. and duly constituted and opened for business with a quorum of five (5) members.

II. ADOPTION OF AGENDA

III. ADOPTION OF MINUTES

There were no minutes to adopt.

IV. NEW BUSINESS

1. UDO Section Review

Jennifer Tipton explained that the sections for review would be Sections 2.03, 2.04, Chapter 9, and Chapter 10.

Section 2.03, Special Purpose and Overlay Districts, the board made the following comments:

- Section 2.03.01 (C) instead of saying immediately adjacent the board would like it to say “at least 200’ from the center of road, but not less than one parcel deep”
- Section 2.03.01 (D) (1), the board would like this area to be from Swannanoa River at Kearfott to Exit 65, so it is just one corridor
- Section 2.03.01 (D) (3), the board would like this to be from US 70 to NC 9 along Blue Ridge Road
- Section 2.03.01 (E), add non-residential in front of building for entire section

Section 2.04, Land Use Standards (Administrative and Special), the board made the following comments:

Planning Board Regular Meeting
February 23, 2023

- Section 2.04.05 (D) (2), change chickens to hens and add fowl to cover quail, guinea fowl , etc.
- Section 2.04.05 (D) (4) (c), the board would like to not have a time limit on garden markets and staff will verify if there is a reason behind the time limit. The board also wants to know how many days a garden market would have to cease operation before they could begin for another four months
- Section 2.04.05 (D) (5) (f) and (g), item f contradicts item g, so the board recommends removing item f
- Section 2.04.05 (D) (5) (h), the board would like this to be one parking space per secondary dwelling unit and staff let the board know that the parking table would also have to be amended
- Section 2.04.05 (D) (13), not sure what the rest of the second sentence is supposed to be.
- Section 2.04.05 (D) (15), items c, d, and e, need to be reformatted as 1, 2, and 3 under item b and then the letters after b will need to be reformatted
- Section 2.04.05 (D) (21) and (22), our requirements need to be added
- Section 2.04.07 (F) (3) (d) (viii), since the state doesn't allow aesthetics to be dictated, "shall match the architecture of the cottages in style and material", should be deleted
- Section 2.04.07 (F) (21) (f) (i), spell out sexually oriented businesses, don't abbreviate
- Section 2.04.07 (F) (21) (f) (v), what are protected corridors?

Chapter 9

Section 9.01 Classification of Nonconformities

- Section 9.01.01 (B), Ron suggested breaking this out into two paragraphs
- Section 9.01.02 (B) (2), Ron is checking to make sure we can have different timelines for reestablishment of a nonconformity
- Section 9.01.02 (F) (3), Ron does not think we can do this, so it should be deleted
- Section 9.01.02 (G), Ron is again checking to make sure we can make this a separate timeframe and if we can, the board would like this timeline to also pertain to vape and tobacco shops
- Section 9.01.04 (D), remove allowance for director to make a call on a variance and put it all to Board of Adjustment
- Section 9.01.06 (D) (4), the board thinks thirty days is too short of a timeline and recommends changing it to 180 days

Chapter 10

Section 10.02 Remedies

Section 10.02.02, remove entire section regarding criminal penalties

V. OLD BUSINESS

None.

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VI. PUBLIC COMMENT

None.

VII. COMMUNICATION FROM PLANNING BOARD

None.

VIII. COMMUNICATION FROM STAFF

None.

VX. ADJOURNMENT

With no further business, the meeting was adjourned at 8:10 p.m.

Prepared by:

Chris Collins, Chair

Jennifer Tipton, Senior Admin

TOWN OF BLACK MOUNTAIN PLANNING BOARD

The Black Mountain Planning Board held its regular meeting on Monday, February 27, 2023, at 6:00 p.m. in the Board Room of Town Hall.

I. CALL TO ORDER

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

Pam Norton, Vice Chair
Kathy Phillips
Joe Laudenslayer
Rick Earley
Chas Fitzgerald

Absent:

Chris Collins, Chair
Lauronda Teeple

Staff:

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

The meeting was called to order at 6:02 p.m. and duly constituted and opened for business with a quorum of five (5) members.

II. ADOPTION OF AGENDA

The agenda was adopted as presented by consensus.

III. ADOPTION OF MINUTES

Chas Fitzgerald made a motion to approve the minutes of January 27, 2023, as written. The motion was approved by consensus.

IV. NEW BUSINESS

1. Voluntary Annexation Request – Chinquapin Hill

The owner of 99999 Chinquapin Hill is seeking to voluntarily annex a portion of the property into the town limits and create three new lots. A portion of Chinquapin Hill is already inside the town limits. The owner is requesting a zoning designation of UR-8. The Planning Board said that they would like to see a zoning designation of SR-2 because of the slope and residual lot size. Town Attorney Ron Sneed said that the situation would appear to meet the higher standard for Council to zone to something other than UR-8, since this would be a spot zone as the area surrounding the parcel is zoned UR-8. Chas Fitzgerald made a motion that the annexation seems favorable and to recommend a zoning classification of SR-2. The motion passed by consensus.

2. UDO Sections for Review and Comment

Kelli McCormick went through the comments provided by staff from the Planning Boards workshop. The board had some questions about Cottage Housing Developments and Jessica Trotman said that she will bring some conceptual developments to help the board visualize how a Cottage Housing Development could be utilized, especially in regards to theoretical maximum

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density. Chas Fitzgerald made a motion to recommend staff's feedback be added to the comments provided from the workshop and put into the draft. The motion passed by consensus.

V. OLD BUSINESS

None.

VI. PUBLIC COMMENT

Kiersten Hall, 100 Portmanvilla Road, asked how the planning for the Hemphill and Black Mountain Ventures properties will occur and expressed her hope that the public will have ample opportunity for input.

VII. COMMUNICATION FROM PLANNING BOARD

None.

VIII. COMMUNICATION FROM STAFF

Jessica Trotman read a Facebook post stating that the Planning Board is changing development regulations without appropriate public participation. Ms. Trotman explained that this was false information and all of the Planning Board meetings and agendas are public and posted. There will be public participation when the draft is ready and that will be noticed at that time.

VX. ADJOURNMENT

With no further discussion, the meeting was adjourned at 7:35 p.m.

Prepared by:

Chris Collins, Chair

Jennifer Tipton, Senior Admin



**Town of Black Mountain
Building, Planning and Zoning**

160 Midland Avenue ♦ Black Mountain ♦ North Carolina ♦ 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-2962

STAFF REPORT

Planning Board Meeting Date: March 27, 2023

GENERAL INFORMATION

APPLICANT:	Libby Roberts-Snelling and Vince Snelling
HEARING TYPE:	Rezoning Request
REQUEST:	R-LD (Low-Density Residential District - Buncombe County) to UR-8 (Urban Residential district)
CONDITIONS:	This rezoning is for a parcel that is in the process of being annexed into the town.
LOCATION:	Parcel is off Chinquapin Hill
PARCEL ID NUMBER(S):	0710-10-9234-00000
PUBLIC NOTIFICATION:	The notification for this public meeting was 200 feet (Chapter 1, Section 1.5.4 F of the Land Use Code requires notification of the owner of that parcel of land and the owners of all parcels within 200' of the property boundary of the proposed amendment). # notices were mailed to those property owners in the mailing area.
TRACT SIZE:	8.41 acres
TOPOGRAPHY:	18.30% slope
VEGETATION:	Wooded field

SITE DATA

EXISTING USE

Undeveloped Tract

SUMMARY OF DISTRICT PURPOSES

R-LD (Low-Density Residential District - Buncombe County)	Purpose: The R-LD Low-Density Residential District is primarily intended to provide locations for low-density residential and related-type development in areas where topographic or other constraints preclude intense urban development. These areas are not likely to have public water and sewer services available, and the minimum required lot area will be one acre unless additional land area is required for adequate sewage disposal. These are environmentally sensitive areas that are characterized by one or more of the following conditions: Steep slopes, fragile soils, or flooding.
UR-8 (Urban Residential District)	Purpose: The mixed residential district is established to provide a variety of housing types, promote density in the more urbanized and developable areas of town, and structure the orderly development of residential neighborhoods.

ZONING DISTRICT STANDARDS

District Summary

	<u>Existing</u>	<u>Requested</u>
Zoning District Designation:	R-LD	UR-8
Max. Density:	2 units per acre	8 units/acre
Front Setback:	10'	20'
Side Setback:	10'	10'
Rear Setback:	20'	15'
Min. Lot Size:	43,560 sf	1/8 acre (5,446 sf)
Max. Height:	35'	35'
Min. Width:	N/A	15'
Min. Depth:	N/A	None
Permitted Uses:	• Single-family residential dwelling, including modular • Two residential dwelling units (attached or detached) • Shared housing/Community living facilities. • Single-Family Residences • Two-Family Residences (duplex) • Government facilities • Places of worship	

- HUD-labeled manufactured homes-Residential
- Subdivisions
- Subdivisions, alternative path hillside development
- Subdivisions, conservation development
- Accessory buildings
- Cemetery
- Family care home
- Home occupations
- Places of worship
- Private utility stations and substations, pumping stations, water and sewer plants, water storage tanks (less than 2 acres in total footprint)
- Recreation use, governmental
- Vacation rentals
- Public utilities
- Accessory structures
- Camps, summer
- Bed and Breakfast Homes
- Home Occupations

Additional Requirements:

- Bed and breakfast inns (10 occupants or less)
- Day nursery and private kindergarten (up to 8 students)
- Manufactured Homes on individual lots
- Secondary Dwellings
- Boarding House
- Family Care Homes
- Agriculture
- Bed and Breakfast Inns
- Day care centers

Special Uses:

- Bed and breakfast inns (more than 10 occupants)
- Private utility stations and substations, pumping stations, water and sewer plants, water

storage tanks (2 acres or greater in total footprint)

- Public utility stations and substations, pumping stations, water and sewer plants, water storage tanks (less than 2 acres in total footprint)
- Public utility stations and substations, pumping stations, water and sewer plants, water storage tanks (2 acres or greater in total footprint)
- Radio, TV and telecommunications towers
- Recreation use, non-governmental

Special Use Permit:

- Conservation Subdivision
- Cottage Housing Development (CHD)
- Residential Planned Unit Development (PUD)
- Manufactured Home Parks
- Multi-family residential – all levels

Exclusions:

- All uses not specifically enumerated
- All uses not specifically enumerated

SPECIAL INFORMATION

Overlay Districts

Historic District Overlay	N/A
Flood Damage Prevention Overlay	N/A
US 70 Corridor Overlay	N/A
Fire District Overlay	N/A
Pedestrian Master Plan Overlay	N/A
Wellhead Protection Overlay	N/A

Environmental

Floodplain	N/A
Floodway	N/A
Stream	N/A

Utilities

Water	N/A
Sewer	6" sewer line runs along Chinquapin Hill

Landscaping

There are no landscaping requirements for residential property.

Transportation

Street Classification	Chinquapin Hill is a private street. North Fork Rd. is a state roadway.
Site Access	The parcel is bordered by Chinquapin Hill and North Fork Rd.
Traffic Counts	N/A
Sidewalks	There are no sidewalks on Chinquapin Hill and North Fork Rd.
Transit in Vicinity	None
Traffic Impact Analysis (TIA)	Not required by Land Use Code
Street Connectivity	N/A
Other	N/A

IMPACT/POLICY ANALYSIS

The UR-8 district is similar to the county's R-LD district in being focused on residential development. Two significant differences are:

- R-LD is intended for lots where topographic or other constraints preclude intense urban development; UR-8 has no such focus.
- R-LD has a minimum lot size of one acre; UR-8 has a minimum lot size of 1/8 acre.

UR-8 conforms to current zoning nearby.



REZONING WORKSHEET

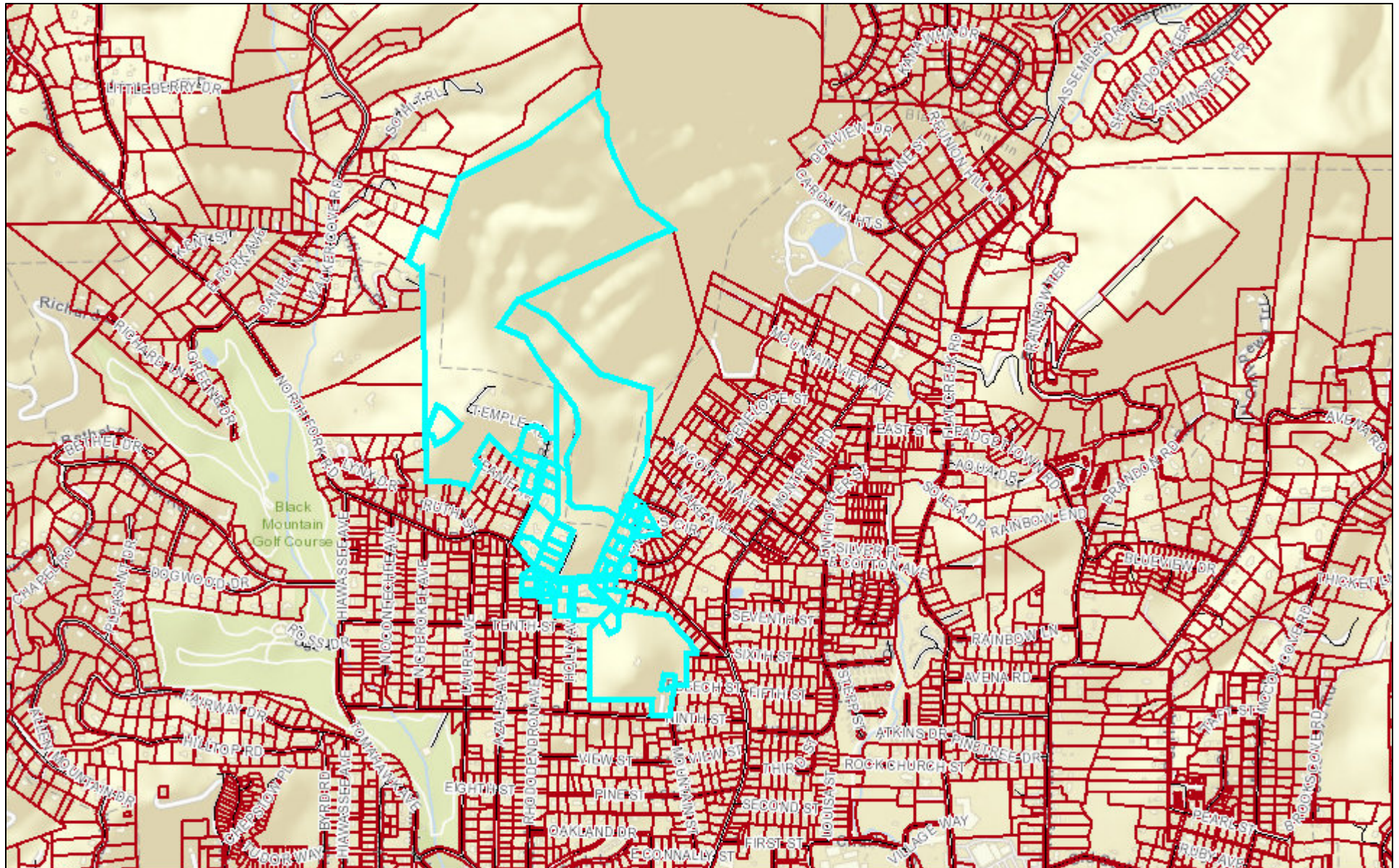
PIN #: 0710-10-9234-00000

Current Zoning District: R-LD Requested Zoning District: UR-8

The rezoning was granted based on the following reasonable findings of fact:

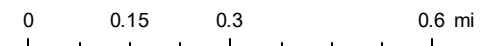
1. The overall size of the tract of land proposed for rezoning () is / () is not reasonable compared to the size of the zoning district in which the subject property is located.
2. The proposed rezoning () is / () is not consistent with the comprehensive plan or elements thereof.
3. The impact to the adjacent property owners and the surrounding community () is / () is not reasonable, and the benefits of the rezoning shall outweigh any potential inconveniences or harm to the community.
4. The allowed uses with the proposed zoning district () are / () are not similar or comparable to the permitted uses as currently zoned.

RZ 01-23 - Chinquapin Hill Buffer Map



February 20, 2023

1:18,056



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

PINNUM	OWNER	ADDRESS	CITYNAME	STATE	ZIP CODE
'0619194822000000'	PULLIUM ROBT E;PULLIUM KATIE	807 RHODODENDRON AVE	BLACK MTN	NC	28711
'0619194930000000'	CREASMAN LISA;CREASMAN CHRISTOPHER SHAWN	817 RHODODENDRON AVE	BLACK MTN	NC	28711
'0619194937000000'	LEVINE RUBEN H;HERNANDEZ STEPHANIE I	819 RHODODENDRON AVE	BLACK MTN	NC	28711
'0619195786000000'	MCGOVERN BARRY THOMAS;MOORE KATHERINE LYDON	4136 LINWOOD RD	COLUMBIA	SC	29205
'0619195873000000'	LEAHY PAUL E;LEAHY FRANCES E	814 RHODODENDRON AVE	BLACK MTN	NC	28711
'0619195971000000'	MACKENZIE LUKE T;LEWIS TIFFANY L	155 N FORK RD	BLACK MTN	NC	28711
'0619196845000000'	TWO HAMMERS GETAWAYS LLC;HAMMER FAMILY TRUST	695 REED ST	ASHEVILLE	NC	28803
'0619197619000000'	SUDNIK RACHEL H;SUDNIK CHARLES K	807 HOLLY AVE	BLACK MTN	NC	28711
'0619197833000000'	MARLOR LINDA S	15 WISHING WELL DR	CANDLER	NC	28715
'0619199674000000'	CURTIS JUDITH A SKINNER	806 HOLLY AVE	BLACK MTN	NC	28711
'0619199861000000'	E NEIL YOUNG REVOC LIVING TRUST SHARON YOUNG REVOC LIVING TRUST	PO BOX 4284	TALLAHASSEE	FL	32315
'0619290845000000'	TABOR SHARON	141 N FORK RD	BLACK MTN	NC	28711
'0619291765000000'	SWANN TIMOTHY JEREMIAH;SWANN REBECCA H	PO BOX 1458	BLACK MTN	NC	28711
'0619291846000000'	PIKE ROBERT E;HAZELWOOD PATRICIA	139 N FORK RD	BLACK MTN	NC	28711
'0619294213000000'	CARSON FAMILY LP ETAL	704 WALNUT ST	MARKS	MS	38646
'0710104220000000'	THOMAS DRAKE SPENCE;VERNON KAREN SUE	4 TEMPLE RD	BLACK MTN	NC	28711
'0710104483000000'	WEAVER LAURA M;WEAVER CHAD EVERETTE	14 TEMPLE RD	BLACK MTN	NC	28711
'0710104860000000'	REED HOMER C III;REED KRISTI COLLINS	100 JEANIE AVE	BLACK MTN	NC	28711
'0710104966000000'	FEDIGAN FAYLE MARIE;FEDIGAN MICHAEL RICHARD	15 CITY TER N	NEWBURGH	NY	12550
'0710105084000000'	HALL ADAM CRAIG;WILLIS COURTNEY R	35 CHINQUAPIN HL	BLACK MTN	NC	28711
'0710105691000000'	JONES KELLY;SINCLAIR DEBORAH	70 TEMPLE RD	BLACK MTN	NC	28711
'0710106123000000'	HALL DANIEL RAY;HALL CHARLENE C	21 CHINQUAPIN HL	BLACK MTN	NC	28711
'0710106251000000'	GREY EAGLE REVOCABLE LIVING TRUST	PO BOX 541	HAMILTON	MT	59840
'0710106727000000'	VINUEZA IVAN M;FROST ELIZABETH H	90 TEMPLE RD	BLACK MTN	NC	28711
'0710106940000000'	HUBER JUDITH	96 TEMPLE RD	BLACK MTN	NC	28711
'0710107302000000'	ROBERTS ELIZABETH BAUGH	PO BOX 541	HAMILTON	MT	59840
'0710108888000000'	ALEXANDER(LE) JOHN M JR;ROBERTS ELIZABETH BAUGH;CHRISMAN ELIZABETH;MAYS MARY	PO BOX 26837	RALEIGH	NC	27611
'0710109234000000'	GREY EAGLE REVOCABLE LIVING TRUST	PO BOX 541	HAMILTON	MT	59840

'071011514100000'	DODD(LE) MARY CARROLL ALEXANDER;DODD(LE) JACK GRIFFIN III	99 TEMPLE RD	BLACK MTN	NC	28711
'071012358600000'	ALEXANDER(LE) JOHN M JR;ALEXANDER(LE) SUSAN CARROLL	PO BOX 26837	RALEIGH	NC	27611
'071020005100000'	SHIVERS TIMOTHY D;SHIVERS RUTH A	140 N FORK RD	BLACK MTN	NC	28711
'071020103000000'	MYCOFF DAVID A;MAH YOKE MEI	48 DAISY HILL RD	ASHEVILLE	NC	28805
'071020115000000'	MYCOFF DAVID A;MAH YOKE MEI	48 DAISY HILL RD	ASHEVILLE	NC	28805
'071020127300000'	STAFFORD JERRY;STAFFORD ANNE H	47 ERIN GLEN CT	FAIRVIEW	NC	28730
'071020208100000'	BALLARD BROTHERS REAL PRTY LLC	PO BOX 68	SWANNANOA	NC	28778
'071020213900000'	SOBOL FAMILY LIVING TRUST C THOMAS SOBOL JR & BEVERLY TRUSTEE	204 CHAPEL RD	BLACK MTN	NC	28711
'071020235200000'	MUTUAL HOME LLC	142 LAST RESORT TER	BLACK MTN	NC	28711
'071020247600000'	STAFFORD JERRY;STAFFORD ANNE	47 ERIN GLEN CT	FAIRVIEW	NC	28730
'071020343200000'	OLE CABIN LLC	48 BLUE RIDGE ASSEMBLY DR	BLACK MTN	NC	28711
'071020352600000'	360 GENESIS CIRCLE LLC	110 N DOUGHERTY ST	BLACK MTN	NC	28711
'071020357500000'	360 GENESIS CIRCLE LLC	110 N DOUGHERTY ST	BLACK MTN	NC	28711
'071020437200000'	ABLES TRACY A	365 GENESIS CIR # A	BLACK MTN	NC	28711
'071020448300000'	HAUSLEY JAMES E;HAUSLEY BEVERLY B	361 GENESIS CIR	BLACK MTN	NC	28711



Town of Black Mountain

160 Midland Avenue ♦ Black Mountain, North Carolina, 28711
Phone: 828-419-9300 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-5962

NOTICE OF REZONING REQUEST PUBLIC MEETING ONLY

(REGARDING NEIGHBORS WITHIN 200 FEET OF PROPERTY)

DATE: **March 13, 2023**

TO: **Property Owner**

FROM: **TOWN OF BLACK MOUNTAIN
ZONING ADMINISTRATOR**

APPLICANT NAME: **Vince & Libby Snelling**

PROPERTY ADDRESS: **99999 Chinquapin Hill**

PIN #: **0710-10-9234.00000**

CURRENT ZONING CLASSIFICATION: **R-LD (Buncombe County Zoning)**

REQUESTED ZONING CLASSIFICATION: **UR-8 (urban residential)**

CURRENT LAND USE: **vacant land**

SIZE OF PARCEL: **8.14 acres (owners are only looking to rezone a portion of the property)**

REASON FOR REQUESTED REZONING:

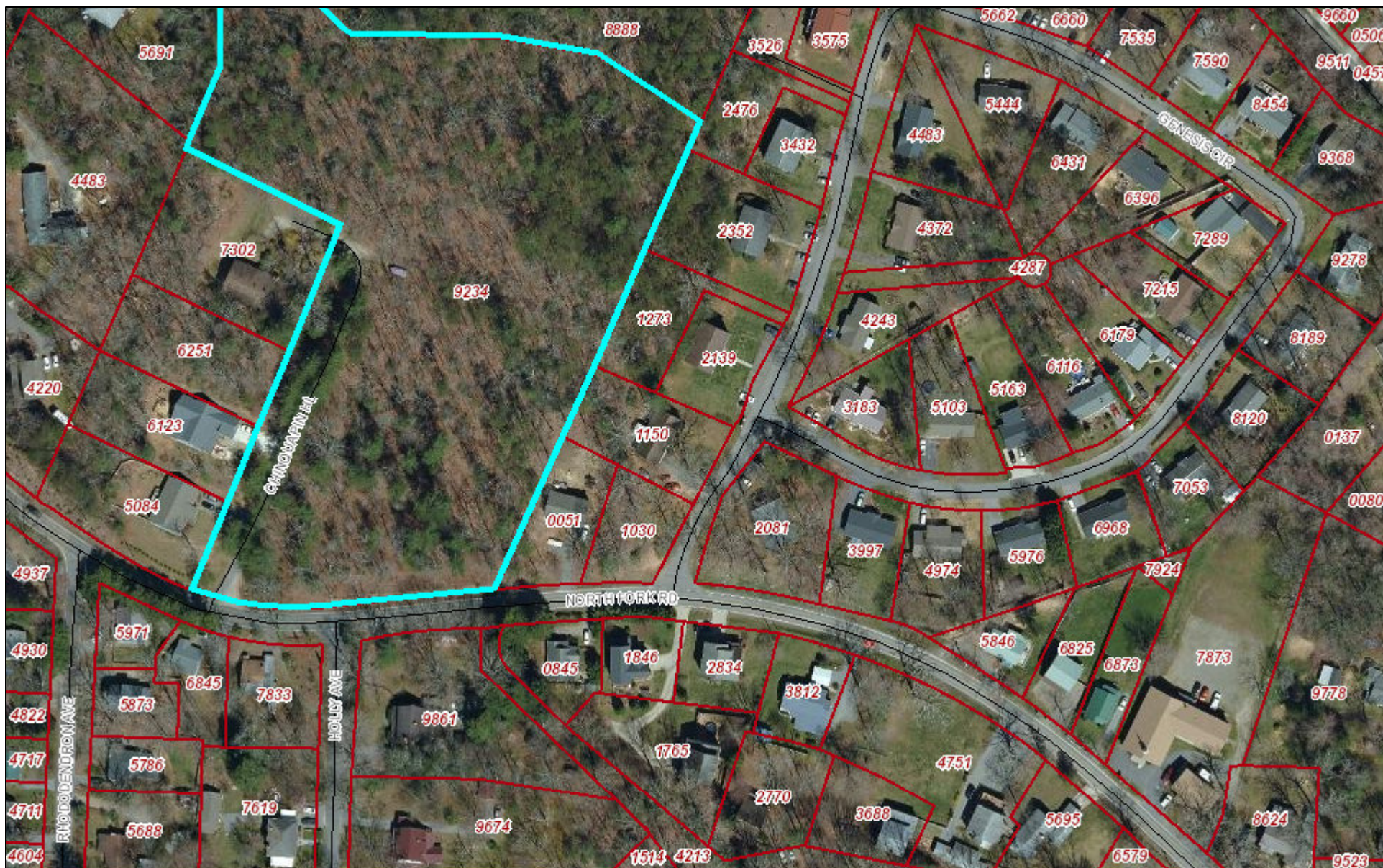
To build three new residential homes.

***A public meeting of the Planning Board on this matter will be held Monday, March 27, 2023
@ 6:00 in the Board Room of Town Hall, 160 Midland Avenue.***

This is your notification for this request specified under 1.5.4 of the Land Use Code for the Town of Black Mountain. Section 1.5.4 (G) and (I) indicate that notice be provided to all property owners within 200 feet of the site's property lines.

Note: This is not a public hearing. This is a meeting for the Planning Board to make a recommendation to the Town Council at which time the public hearing will be held.

RZ 01-23 - Chinguapin Hill Aerial Map



February 20, 2023

1:2,257

0 0.0175 0.035 0.07 mi



CHAPTER 3: BUILDING AND SITE DESIGN (REMAINING SECTIONS)

3.02.04 Multiplexes and Apartments

- A. **Purpose.** The purpose of this section is to regulate the standards for Multiplexes and Apartments within the Town of Black Mountain.
- B. **General Provisions.**
1. *Use of Parcel.* 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.
 2. *Distance Between Buildings and Lot Lines.* 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.
 3. *Solid Waste Storage Facilities.* 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.
 4. *Structure Requirements.*
 - a. 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.
 - b. 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.
 5. *Landscaping.* 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.
 6. *Pedestrian Circulation.* 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.
 7. *Property Access.* 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.
 8. *Parking.* 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.
- C. **Multiplexes Containing Two to Four Units.**
1. *Unit Entries.* There shall be a maximum of two individual unit entries on any façade.
 2. *Unit Arrangement.* Units may have either private or shared access and may be arranged in a variety of configurations, including back-to-back, side-to-side, or over-under.
 3. *Unit Appearance.* The building shall be designed in a manner so as to appear as a large single-family dwelling.

3.02.05 Nonresidential and Mixed Use

A. **Materials.**

1. *Percentage.* Building walls shall incorporate brick, cast stone, formed concrete, or other long-lasting masonry material acceptable to the Planning Director over a minimum percentage of surface area (excluding windows, doors, and curtain walls). The remainder of wall area may incorporate other materials. Minimum percentages are required as follows: 75% of surface area minimum on all sides of the building visible from a public right-of-way or residential property shall meet this requirement.
2. *Consistency.* All buildings, including gasoline pump canopies, shall utilize a consistent architectural style through the use of similar materials.
3. *Variations.* Differing buildings, businesses, or activities within the same development may be distinguished by utilizing variations of the same architectural style and materials.
4. *Sides and Backs.* Both sides and any back of a building with double street frontage shall be visually attractive by using the same materials and architectural detailing throughout.
5. *Prohibited Materials.* No building elevation may be fully built with sheet or corrugated aluminum, iron or steel, plain concrete, plain concrete block, exterior panelized plywood, including foundation materials. Some of these materials, if rated for outdoor use and approved by the Planning Director, may be used for a portion of the structure as long as the minimum percentage in (1) above is met.
6. *Alternative Materials.* The Planning Director may approve alternative building materials not specified in this Subsection if the Planning Director determines that, compared to the listed materials, the alternative:
 - a. Is substantially equal to or better in quality, durability, and appearance and will not violate any provision of this Section;
 - b. Is proposed in order to achieve certification in Leadership in Energy and Environmental Design ("LEED"), and the materials qualify for LEED points under both the "energy and atmosphere criteria" and the "materials and resources criteria" of the LEED checklists; or
 - c. Is part of a building that is certified by the Environmental Protection Agency as designed to earn an ENERGY STAR rating, and the materials substantially improve the energy efficiency of the building compared to materials that are permitted in this Subsection.

B. **Transparency.** Façades of all commercial structures shall incorporate windows over a minimum percentage of the surface area of street fronting façades. Additional window standards for Downtown are found in [3.02.06](#).

1. *Percentages.* Minimum percentages for different levels are required as follows:
 - a. Ground level of retail repair, sales, and service uses 25,000 square feet in area or less: 50% of surface area minimum;
 - b. Ground level of office and other commercial uses 25,000 square feet in area or less: 35% of surface area minimum;
 - c. Ground level of any commercial use over 25,000 square feet: 25% of surface area minimum; and
 - d. Upper level of all uses: 20% surface area minimum.
2. *Measurement.* Transparency of the ground level shall be calculated within the first 15 feet of the building wall, measured vertically at street level.
3. *Multiple Facades.* In cases where a building has more than two façades fronting a street, the transparency requirement shall only be required on two façades based on pedestrian traffic and vehicular visibility.
4. *View into Building.* All ground level windows shall provide direct views to the building's interior or to a lit display area extending a minimum of three feet behind the window. Ground level windows shall extend above an 18 to 24 inch base. Glass on windows and doors on the first floor shall be clear. Lightly tinted

glass in neutral colors above the first floor is permitted. Such tinting is required to provide a visible light transmission percentage in excess of 85 percent. Mirrored glass is prohibited.

C. Articulation.

1. *Blank Walls.* In order to add architectural interest and variety and to avoid the effect of a single long or massive wall with no relation to human scale proportions, the following standards shall apply:
 - a. No wall that faces a street or connecting walkway shall have a blank, uninterrupted length exceeding twenty (20) feet.
 - b. All building walls shall include at least two of the following:
 - c. Change in plane;
 - d. Change in texture or masonry pattern; or
 - e. Windows.
2. *Consistency with Front Façade.* All sides, including the rear as required on double frontage streets, of the building shall include materials and design characteristics consistent with those of the front.
3. *Canopies and Awnings.* In the event that canopies, awnings, or other similar appurtenances are used, the following standards shall apply:
 - a. Awnings shall be constructed of canvas, metal, or a similar material.
 - b. Such appurtenances shall be constructed of materials designed to complement the streetscape and the structure.
 - c. Any appurtenance may extend from the building up to 80 percent of the width of the sidewalk area or nine feet, whichever is less.
 - d. In no case shall any such facility extend beyond the curb line of the street, nor shall it interfere with the growth or maintenance of street trees, or maintenance of street lights or street signs.
 - e. A minimum overhead clearance of eight feet from the sidewalk shall be maintained.

D. Access.

1. *Into Structure.* Structures shall be sited so that the primary access is from the street front sidewalk leading to the parking area. In the event that a structure is located on a State Numbered Highway, the Planning Director may permit the primary access to be located facing the parking area. All street level retail uses with sidewalk frontage shall be furnished with an individual entrance and direct access to the sidewalk in addition to any other access which may be provided. Doors shall provide a sense of entry and be designed to add variety to the streetscape through the use of recessed entries, projecting elements, porches, columns, and/or other architectural features.
2. *Into Lot.* Any lot of record shall be allowed one driveway access point notwithstanding the provisions of this section that may prohibit such access; provided, however, that two or more lots under common ownership shall be considered one lot and shall comply with the requirements of this section. Except where access would be denied, driveways shall be located at least 200 feet from the center of the line of any street intersecting the street and shall be located at least thirty feet from a side property line, except where a mutual joint access agreement exists which provides for a shared driveway for adjoining owners. Driveways on the same property shall be not less than 120 feet apart, measured along the right-of-way from center of driveway to center of driveway. Corner lots and tracts will be permitted one less driveway access point to the thoroughfare unless shared driveways are used on the thoroughfare access points or the frontage of the corner lot is less than 200 feet on the road as measured from the edge of the thoroughfare's right-of-way.

3.02.06 Central Business District (CB)

- A. **Generally.** The Central Business District serves as the traditional downtown area with a compact pedestrian-friendly center with urban character and a mix of uses typical for the core of the town. The intent of the ordinances in this section for the downtown (CB District) is to develop and encourage multi-generational housing, retail space and restaurants. These types of housing and businesses strive to make neighborhoods accessible, safe, and inclusive for children, youth, families, adults, and the elderly. The standards within this section apply to all property zoned CB. These are also in addition to other standards found elsewhere in this UDO.
- B. **Purposes.** The purposes of these standards are to:
1. Protect and enhance the economic and aesthetic appeal of properties that have an impact on the quality of life experienced by visitors to and residents of the Town of Black Mountain.
 2. Guide the orderly development of properties adjacent to and within the vicinity of a major thoroughfare corridors identified as the Town's main streets, while at the same time maintaining traffic efficiency and safety of travel.
 3. Preserve the unique small town character of Black Mountain as a place where arts, culture, and creativity thrive.
 4. Implement streetscape design that is both inviting and on a human scale.
 5. Communicate the community's vision for the downtown area.
- C. **Applicability.** These standards shall apply when the following are met in the CB District:
1. Any new construction.
 2. Minor level exterior building improvements, parking changes and signage changes (Minor level proposals) that require a zoning permit, building permit and/or sign permit and said improvements and changes are under \$15,000. Applicability will be limited to the element altered.
 3. Mid level exterior building improvements, parking changes and signage changes (Mid level proposals) that require a zoning permit, building permit and/or sign permit and said improvements and changes are under \$90,000 but more than \$15,000. Applicability will be limited to the elements altered or those elements specified in the applicant's Downtown Incentive Façade Grant proposal.
 4. Major level exterior building improvements, parking changes and signage changes (Major level proposals) when total costs exceed \$90,000. Applicability shall be to all exterior elements and signage.
- D. **Specific Standards.**
1. *Awnings.*
 - a. Awnings are encouraged.
 - b. Long expanses of awning should be broken into segments that reflect the door or window openings beneath them.
 - c. Awnings cannot extend across multiple storefronts and/or multiple buildings.
 - d. Awnings must be constructed of durable, protective material. Fabric awnings are strongly encouraged. Metal awnings are allowed with Planning Director approval. Plastic or fiberglass awnings are not allowed.
 - e. Backlighting or illuminating awnings may be allowed with Planning Director approval.
 - f. Awnings must project a minimum of 36" from the building.
 - g. When façade rehabilitation is taking place, it is strongly encouraged that awnings of nonconforming materials (see above) or awnings in disrepair be removed and/or replaced.

2. *Signs.*

- a. Symbolic three-dimensional signs such as barber shop poles and appropriately-sized projecting signs are encouraged.
- b. If signage has the capability of being lit in the evening, the source of light must not be visible to motorists or pedestrians.
- c. Signs constructed of materials such as metal or wood are preferred.
- d. Permanently painted window signage is encouraged if compatible with the architecture of the building. Painted window signs should not consume more than one-third of the glazed area of the window.
- e. No plastic molded internally lit signs are allowed.
- f. Neon signs are not permitted on the exterior of theatre buildings. Neon signs are permitted in display windows, if not covering more than one-third of the window surface area.
- g. Internally illuminated signs (not including neon) are prohibited except for theater signage.
- h. Pylon and monument signage is prohibited in Downtown. Pole mounted signs may be allowed subject to an appropriate contribution to the context of the property and streetscape in the downtown area. Appropriate "A-frame" signage is permitted as long as it is not permanently affixed and made of metal, wood and writable-erasable surfaces.
- i. Temporary window signage is limited to one-third of the window surface area. The combination of neon signage, permanently painted signage and temporary signage should not exceed a total of two-thirds of the window surface area.
- j. Projecting signs must be no greater than 12 square feet and have a maximum width of three feet and cannot extend beyond the first floor of the building. No less than 10 feet of clearance shall be provided between the sidewalk elevation and the lowest point of the projecting sign.
- k. Maximum distance between sign and building face is one foot. Signs cannot block or obliterate design details, windows or cornices of the building upon which they are placed.

3. *Roofs and Parapets.*

- a. Rooflines should mimic the separate yet complementary rhythm of Downtown buildings.
- b. Flat roofs (slightly sloped to drain) are preferred with parapets that articulate the rhythm of the buildings. Parapets should be embellished with brick detailing and stepped or sloped to achieve a visually interesting yet harmonious sequence along the building façade.
- c. Sloped roofs are not allowed unless the roof form is concealed by a parapet or false front. Exceptions may be granted if the sloped roof is used on top of a multi-story building to help reduce the overall height of the façade.
- d. The predominant roof form from all other buildings within 250 feet on the same side of the street and within the same block shall be the roof form used for new construction. For flats roofs, parapet walls are required on any facade facing a public street.

4. *Utility Areas (Alleys), Mechanical Equipment Screening, and Outdoor Storage.*

- a. Utility areas and mechanical equipment should be designed so that they do not detract from the aesthetic appeal of the district.
- b. The screening of exterior trash and storage areas, service yards, loading areas, transformers and air conditioning units must be screened from view with brick, wood, or vinyl fencing or opaque evergreen landscaping. It is required to keep all public right-of-ways (sidewalks) clear of trashcans and debris.

- c. Landscaping and aesthetically pleasing back entrances are encouraged as well.
 - d. Outdoor display or use of cargo containers or shipping containers used in rail, truck, or ship transport are prohibited.
 - e. Outdoor display or use of materials associated with manufacturing, processing, repair or storage is prohibited.
5. *Windows.* Windows may be boarded up for a maximum of five (5) days and only when damaged or being replaced. Reflective or tinted glass is not allowed.
6. *Materials.*
- a. Permitted.
 - i. Traditional materials including brick, stone (including cast stone) and stucco to be used as the primary building materials. Stucco may be used when the property's existing subject surface is finished with stucco. Stucco shall not be used on a building without there being a proper context to support the usage.
 - ii. Tile, stone, glass block, copper flashing, metal and wood should be considered for accent materials and architectural detail. At rear entrances the primary materials should be used in a way that highlights the entrance.
 - iii. Infill construction should reflect some of the detailing of surrounding buildings in window shape, cornice lines and brick work.
 - iv. Building renovation and alterations should restore architectural details of cornices, brickwork, transom, display windows and bulkheads.
 - b. Prohibited.
 - i. Concrete block or brick larger than 4" in height, 12" in length.
 - ii. Aluminum, vinyl or fiberglass siding or roofing materials.
 - iii. Franchise architecture that is out of character with the standards herein.
7. *Streetscape.* When a new or redevelopment project disturbs existing streetscape elements those items must be replaced with approved streetscape elements. Also, when making improvements to private property, including the addition of benches, trash receptacles, fencing, bike racks or trash enclosures, owners are required to match the surrounding style elements.
8. *Upper Floor Treatments.* Upper floor windows should be restored using materials similar to lower floors. The addition of balconies on downtown buildings should be limited to the rear or side of the building.
9. *Lighting.*
- a. Lighting in the downtown should serve to illuminate façades, entrances and signage and provide an adequate level of personal safety while enhancing the aesthetic appeal of the buildings.
 - b. Avoid colored lighting schemes in order to achieve continuity in building lighting within the downtown. Interior showcase lighting is highly encouraged.
 - c. Building and signage lighting must be indirect, with the light source(s) hidden from direct pedestrian and motorist view. For exterior sign illumination, shaded gooseneck lamps are encouraged. Original lighting should be left intact if at all possible. Avoid "faux" historical fixtures such as carriage lights.
10. *Landscaping.* Landscaping treatments should be used to enhance the pedestrian experience, complement architectural features and/or screen utility areas. The use of flower boxes, planters and hanging flower baskets is encouraged.

3.02.07 Industrial Uses (Reserved)

3.02.08 Infill and Redevelopment Sites

- A. **Description.** An infill or redevelopment project consists of smaller lots and greater densities than conventional developments that make efficient use of land and infrastructure on vacant or underutilized lots in already developed areas.
- B. **Eligibility for Infill.** An infill development type may be located on any parcel that is:
1. *Vacant or Unoccupied.* That is surrounded by existing developed properties and has been vacant or unoccupied for more than one year;
 2. *Utility Easements.* Where adjacent properties abutting at least 50 percent of the non-street perimeter of the subject property are utility easements that create a substantial break in development or redevelopment potential;
 3. *Environmental Constraints.* Where adjacent properties abutting at least 50 percent of the non-street perimeter of the subject property are encumbered by environmentally sensitive or constrained areas such as floodplains; or
 4. *Existing Development.* Where adjacent properties abutting at least 50 percent of the non-street perimeter of the subject property are developed with single-family dwellings of higher density or intensity uses.
- C. **Appearance.** Infill development shall be constructed to be generally compatible in appearance with other existing structures in the context, as established in Context, below, that comply with this Ordinance. This provision shall be satisfied by constructing the proposed building(s) so that at least three of the following features are substantially similar to the majority of other buildings in the context:
1. Roof pitch and overhang;
 2. Shape, size, and alignment of windows and doors;
 3. Front porches or porticos;
 4. Exterior building color; or
 5. Location and style of garage or carport.
- D. **Alternative Standards.** In place of the traditional standards in this UDO, the applicant may utilize the following alternative standards.
1. *Lot Area and Width.* The minimum lot area may be that of the smallest lot in the context of the development, as defined in Context, below. The minimum lot width may be that of the narrowest lot in the context of the development. Refer to platting requirements related to replatting existing lots.
 2. *Maximum Building Height.* The maximum building height may be that of the tallest building in the context, plus 15 percent of the height.
 3. *Minimum / Maximum Setbacks.*
 - a. The minimum front or street side setback may be that of 80 percent of the average front or street side setbacks in the context of the development.
 - b. The maximum front and street side setback, where applicable, may be that of the average of the front and street side setbacks of the context of the development, plus 10 percent.
 - c. The minimum side and rear setbacks may be that of 80 percent of the average side or rear setbacks in the context of the development.
 4. *Buffering.* Except where a buffer is required along a street or parking area, or between zoning districts, the buffer width and planting materials per 100 feet may be reduced by 50%.
 5. *Parking.* The development must meet parking standards.

3.02.09 Sustainability and LEED Incentives

- A. **Purpose.** The purpose of this section is to provide building and permit fee incentives for construction that meets Town goals related to the environment and community development.
- B. **Generally.** Permit fees are established by the Town Council and are published in a schedule of building permit and inspection fees available through the Planning Department.
- C. **Incentive for Energy Efficiency.** To encourage energy efficient, high performance and sustainable building practices, the town will provide a rebate of 50 percent or \$500.00, whichever is greater, for construction projects certified by the NC Healthy Built Homes Program or a Certified Level in the LEED rating systems. Contact the Western North Carolina Green Building Council website for up-to-date information at www.wncgbc.org.
- D. **Incentive for Affordability.** To encourage new home and rental development to be available at median to low-income market prices, the town will provide a rebate equal to 50 percent of the calculated building permit fee for construction projects developed by a housing agency utilizing federal or state CDBG, HOME, HUD or other grant funds designated for the purpose of affordable housing. A 50 percent rebate will also be provided to any developer who provides documentation that the unit on which the fee was paid was sold at a price level consistent with affordable housing guidelines as established by Buncombe County.
- E. **Combined Incentives.** For new construction that meets the criteria of both paragraphs one and two above, a 50 percent rebate will be provided from the building permit fee and all required mechanical, electrical and plumbing inspections will be conducted for a flat, comprehensive fee of \$100.00 per unit.

§ 3.03 Parking, Loading, Stacking, and Access

3.03.01 General Provisions

- A. **Purpose.** The purpose of this Article is to ensure that:
 - 1. *Provision of Parking.* Adequate, attractive, and safe off-street parking is provided by this Ordinance.
 - 2. *Residential Protection.* Sufficient parking is provided in nonresidential areas that are near residential neighborhoods, so that the character and quality of life in the residential neighborhoods are protected from overflow parking;
 - 3. *Provision of Loading Spaces.* Adequate loading areas are provided that do not interfere with the function of other vehicular use areas;
 - 4. *Provision of Access.* Access to sites are managed to maintain the desired function and safety of the adjacent street(s); and
 - 5. *Lighting.* Vehicular use areas and sites are designed and lighted to promote public safety without creating undue light pollution and off-site glare.
- B. **Applicability.** Permanent off-street parking in compliance with this Section shall be required when:
 - 1. *Change in Use or Zoning Classification.* Prior to changes in use(s) or occupancy of existing buildings that require evaluation of parking requirements.
 - 2. *Enlargement or Increased Capacity.* A principal building is enlarged or capacity is increased by adding dwelling units, guest rooms, seats, or floor area; or
 - 3. *New construction or initial use of the property.*
- C. **Generally.** Off-street parking areas shall be maintained and continued as long as the associated building, use, or structure is continued. No person shall utilize such building, use, or structure without providing the vehicle use areas required in this Section. In addition, it shall be unlawful to discontinue, reduce, or remove the

required vehicle use areas apart from the discontinuance of the building, use, or structure, without establishing alternative facilities that meet these requirements.

- D. **Exemptions.** The standards of this Section shall not apply to:
1. *Single-family and Duplexes on Single Lots.* Detached single-family dwellings or duplex developments on individual lots of record (except that single-family units and duplexes shall maintain an area large enough to accommodate two off-street parking spaces); or
 2. *Stand-Alone Parking.* Parking areas that constitute the principal use of a site shall comply with all of the provisions of this Section except for the minimum or maximum number of spaces as required.
 3. *Paving for Assembly Uses.* Paving of parking areas and access ways for assembly uses may be waived if the applicant presents evidence to the Planning Director that these spaces will not be used regularly on a daily basis or at least five times per week. Parking areas for which paving is waived shall maintain a turf surface. All parking areas for which paving is waived shall meet the minimum requirements of Volumes I-C and V of the North Carolina State Building Code for Accessibility and for Fire Prevention. All parking lots shall be constructed with proper drainage.
- E. **Location.** Except for allowances for off-site parking as established in Parking Design, a required off-parking area shall be located on the same site as the building, use, or structure it serves.
- F. **Multiple Uses.** In those instances where there are clearly identified accessory or multiple uses within a structure or multiple structures, the minimum parking, loading, and stacking standards shall apply to each use or structure, resulting in a total parking, loading, or stacking requirement when summed, except as exempted in this Section.
- G. **Timing.** No certificate of occupancy shall be issued unless and until off-street parking and loading is provided in accordance with this Section.
- H. **Insufficient Parking.** The Planning Director may require a landowner to provide additional off-street parking spaces even if the number of spaces provided meets the minimum requirement for the established use, if customers, employees, or delivery vehicles are consistently required to park or unload on the street where on-street loading is prohibited or on other properties due to a lack of available vehicle use area.
- I. **Traffic Study.** In the event a development, regardless of subdivision status, meets the minimum requirement for a traffic study, a traffic study shall be required and the findings reviewed by the appropriate authority for consideration before development approval.
- J. **Maintenance.** All off-street parking areas shall be maintained and free of refuse or debris.
- K. **Number Required.** Off-street parking spaces shall be provided for uses listed below as specified. Any use not specifically listed below shall be required to meet the off-street parking space requirements of that use which most closely resembles the proposed use in character and intensity, as determined by the Planning Director. All parking requirements set forth by this subchapter include provisions for parking for handicapped individuals as stated by any state or federal regulations and detailed in [3.03.03](#).

Use	Off-Street Parking Requirements
Automobile service stations	Two parking spaces for a grease rack or wash rack and one space for each gas pump.
Banks, savings and loans, credit unions and business and professional offices	One space for each 300 square feet gross floor space plus one space for each two employees and loading spaces.

Convenience rental and retail stores	One space for each 300 square feet gross floor space plus one space for each two employees and loading spaces.
Cultural and community facilities	One space per 200 square feet gross floor space.
Doctor and dentist offices	Six spaces per doctor and dentist plus one space for each employee and loading spaces.
Golf courses	Four spaces per hole in addition to parking required for any related activities such as restaurants.
Educational facilities—Primary, elementary or junior high school	One space for each employee and one space for each 400 square feet of area for public assembly and loading spaces. See also requirements for religious complexes.
Educational facilities—Senior high school or college	Two spaces for each classroom and administrative office plus one space for each employee and sufficient space for parking school vehicles and loading spaces. See also requirements for religious complexes.
Group care facility or hospital	One space for each four patient beds, plus one space for each staff or visiting doctor, plus one space for each three employees.
Hotels, motels, bed and breakfast homes and inns	One space for each guest room plus one space for each two employees.
Industrial district (for uses not otherwise specified)	One space for each employee at maximum employment on a single shift, plus one space for each company vehicle operating from the premises, plus one space for each 200 square feet of sales and office area, and loading spaces.
Mobile home park	Refer to § 7.7.1 [appendix A] for mobile home park requirements.
Mortuary or funeral home	One space for each two seats in the assembly room or chapel.
Newspaper publishing plant	One space for each two employees at maximum employment, plus sufficient space for parking vehicles, plus one space for each 200 square feet of sales and service area, plus loading spaces.
Nursery school	One space for each employee and each school vehicle, plus one space for every five children.
Places of public assembly (including private clubs and uses, auditoriums, dance halls, theaters, stadiums, amusement parks and similar places of public assembly)	One space for each four seats provided for patron use plus one space for each 100 square feet of floor or ground area used for amusement or assembly but not containing fixed seats.
Rooming and boarding house	One space for each guest room.
Recreation areas—Ball fields	One space for each four seats in the stands.
Recreation areas—Tennis courts	Two spaces per court.
Religious complex	One space for each three seats in the principal assembly room (one-half of such parking may be available for another use which is closed on Sunday morning).
Residential	Two spaces per dwelling unit.

Restaurant	One space for each four seats (booths and tables included), plus one space for each employee working the shift of greatest employment.
Service and repair establishments	One space for each 300 square feet of floor space plus one space for each two employees and loading spaces.
Unified business developments	The development as a whole shall have sufficient parking spaces, the sum total of which shall satisfy the requirements of this subchapter for each and every establishment located within the development.

3.03.02 Parking Design

- A. **Applicability.** This Section applies to parking areas for both residential and non-residential land uses in any zoning district, except for single-family residential, detached and single-family residential, attached land uses with the exception of B.
- B. **Parking in Residential Districts.** Other than required parking for single-family residences, the following standards shall apply for parking other vehicles:
1. *RV or Camping Trailer.* Not more than one RV or camping trailer shall be permitted on a lot in any residential district. The trailer shall not be occupied temporarily or permanently while it is parked or stored except as otherwise permitted by this ordinance.
 2. *Commercial Vehicles.* Not more than one commercial vehicle that does not exceed 2 tons rated capacity shall be permitted on a lot in a residential district. No commercial vehicles used for hauling explosives, gasoline, or liquefied petroleum products shall be permitted. Idling shall not be permitted overnight nor shall they be parked in the front yard.
- C. **Maximum Grade.** The maximum grade in any off-street parking area shall be 14 percent.
- D. **Surfacing.**
1. *Generally.* Parking lots shall be paved with an all-weather surface that provides effective drainage and protection against potholes, erosion, and dust. Paving is required for all minimum parking, at all entrances, from the road to the required accessible parking spaces, and at loading docks under all circumstances regardless of exceptions below.
 2. *Maintenance.* All paved parking locations shall be maintained to ensure that should a pothole or erosion occur, it will be repaired.
 3. *Pervious Pavement.* All development with paved parking in excess of 100% of the maximum shall be required to use pervious pavement or pervious pavement systems. Minimum required parking shall be paved. From the standpoint of complying with language above, pervious pavement shall be considered paved if it complies with the following:
 - a. The pervious pavement or pervious pavement system shall be designed and certified by a registered engineer or landscape architect to carry a wheel load of 4,000 pounds.
 - b. In nonresidential and mixed-use developments, pervious pavement or pervious pavement systems, except pervious asphalt or pervious concrete, shall not be used for access and circulation drives, driveways, parking aisles, accessible parking spaces, or loading spaces.
 - c. Pervious pavement or pervious pavement systems that utilize turf grass shall be limited to overflow parking which is not typically used on a daily or regular basis.
 - d. The use of pervious pavement or pervious pavement systems shall not count as landscaping.

- e. The use of pervious pavement or pervious pavement systems shall be prohibited in areas on a lot used for the dispensing of gasoline or other engine fuels or where hazardous liquids may be absorbed into the soil.
- f. The use of pervious pavement or pervious pavement systems shall be adequately maintained so that the specified level of perviousness continues overtime.

E. Striping.

- 1. *Clearly Identified.* Except for single family uses, parking spaces shall be permanently and clearly identified.
- 2. *Maintenance.* Nonpermanent type marking, such as paint, shall be regularly maintained to ensure continuous clear identification of the space.

F. Lighting. Any lighting used to illuminate off-street parking areas must comply with *Outdoor Lighting*.

G. Landscaping. Parking lots must incorporate landscaping and buffering in accordance with *Trees, Landscaping, and Buffering*.

H. Aisles.

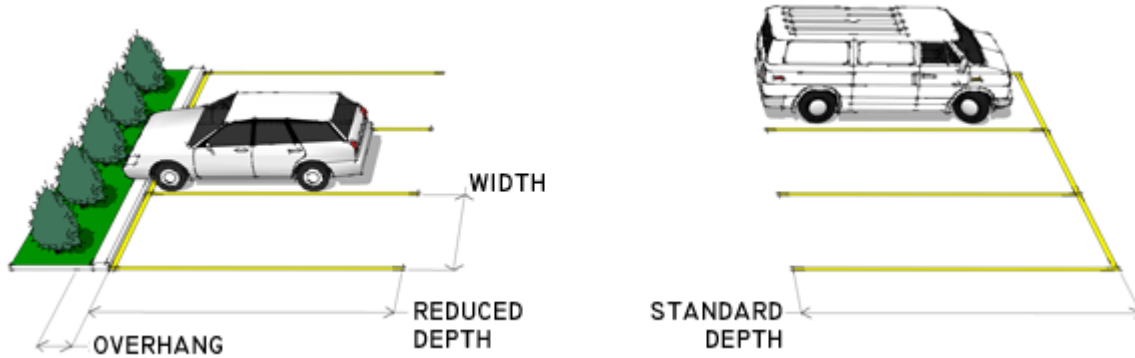
- 1. Two-way entrances or aisles to a parking lot with parking on both sides of the aisle shall be no less than 24 feet wide.
- 2. Two-way entrances or aisles where parking is only provided on one side of the aisle shall be no less than 22 feet wide.
- 3. One-way entrances or aisles where parking is only provided on one side of the aisle shall be no less than 14 feet wide.

I. Dead-End Aisles. Dead-end aisles are not permitted unless adequate turnarounds are provided as stated herein.

J. Parking Space Dimensions. Parking spaces shall have the following dimensions:

- 1. *Generally.* Nine feet in width by the standard stall depth of 20 feet.
- 2. *90-degree Parking Spaces that Abut a Curb or the Edge of Pavement (allowing an overhang).* Required dimensions listed above, may be reduced to nine feet in width by a reduced stall depth of 18 feet:
 - a. There is a six foot wide sidewalk; or
 - b. A minimum eight foot landscape area (see Figure 3.03.02 Parking Space Dimensions).
- 3. *Parallel Parking Spaces.* Parallel parking spaces shall be eight feet width by the standard stall depth of 20 feet.
- 4. *Compact Car Spaces.*
 - a. This Subsection shall apply only to retail shopping centers/superstores of 25,000 square feet or more.
 - b. Each compact car parking space shall be a minimum of eight feet wide and 16 feet long. Compact car parking spaces shall be clearly marked or posted for "Compact Cars Only."
 - c. Not more than 20 percent of the off-street parking spaces required by this Section shall be designed as compact car parking spaces.
 - d. All other provisions of this Section relating to off-street parking requirements shall be met.

Figure 3.03.02
Parking Space Dimensions



- J. **Shared Parking and Parking Off-Site.** If the required automobile parking space cannot reasonably be provided on the same lot with the principal use, the spaces may be provided on other off-street property under the same ownership or on other property rented or leased, provided such property lies within 300 feet walking distance of the main entrance to the principal use. The automobile parking spaces shall be associated with the principal use and shall not be reduced or encroached upon in any manner which would reduce the number of parking spaces below the required minimum.
1. *Approval.* The zoning administrator may approve the joint use of up to 100 percent of the required parking spaces for two or more uses located on the same parcel or adjacent parcels, provided that the developer can demonstrate that the uses will not overlap in hours of operation or in demand for the shared spaces.
 2. *Written Agreement.* Any sharing of required parking spaces located on different parcels shall be documented by written agreement between the owner of the parking area and the party seeking to use the shared parking area, and such agreement shall be recorded in the Office of the Register of Deeds for Buncombe County.
 3. *Relinquishment.* The owner of said lot will relinquish his development rights over the property until such time as parking space is provided elsewhere or the shared parking agreement expires or is amended.
 4. *Demand Changes.* Should the uses change such that the new uses overlap in hours of operation or increase demand for the shared spaces, the shared parking approval shall be amended accordingly or shall become void. Parking meeting the requirements of this chapter shall then be provided for each use.
- K. **Reductions.** Parking requirements may be decreased according to one or more of the following criteria:
1. *Trees.* 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 and including the "tree protection zone," up to 20 spaces in exchange for established trees per acre of a site and depending on use requirements. 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 this chapter.

2. *Bicycles.* 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.
3. *Shared.* A developer may share parking through a joint-use agreement with another business or entity or group of businesses/entities based on a negotiated joint-use agreement among businesses and the projected combined parking needs of the businesses involved.

3.03.03 Accessible Parking

- A. **Generally.** Accessible parking spaces shall be a minimum of the following, as depicted in Figure 3.03.03, Accessible Parking Dimensions:
 1. 13 feet by 18 feet for a single non-van space (8 feet in width in addition to a five-foot access aisle);
 2. 16 feet by 18 feet for a single van space (8 feet in width in addition to an eight-foot access aisle);
 3. 24 feet by 18 feet for a double van space, or a non-van and van double space (eight feet in width for each space with an eight-foot access aisle between spaces).
- B. **Building Code.** Accessible parking spaces shall comply with the most recently adopted North Carolina State Building Code.
- C. **Design.** Accessible parking spaces shall be configured so that users are not required to travel behind cars when traversing from the parking space to the front door of the structure.

Figure 3.03.03
Accessible Parking Dimensions

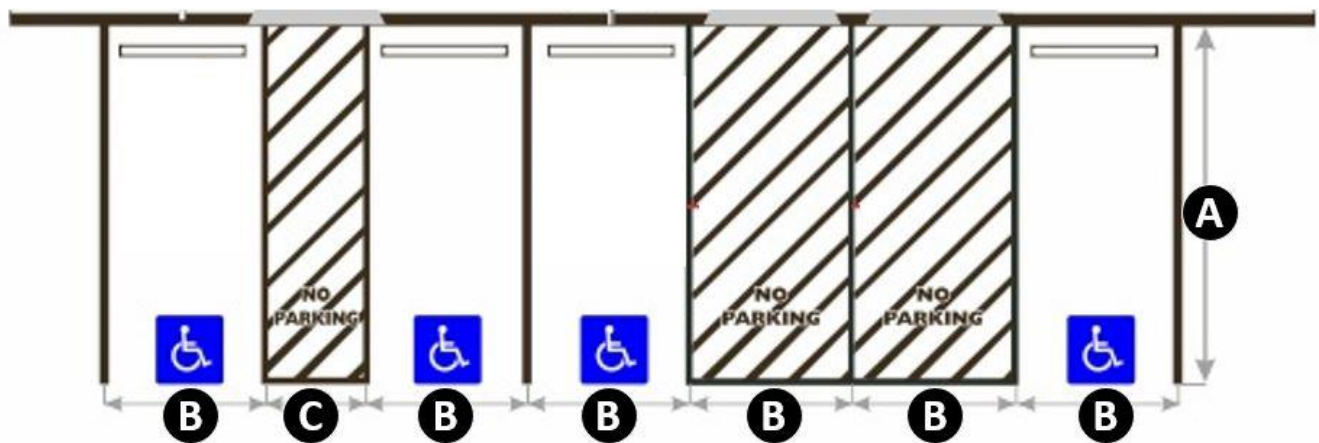


FIGURE NOTES:

A = 18 feet; B = 8 feet (standard)/11 feet (van); C = 5 feet (add 3 feet of width to accommodate vans)

3.03.04 Off-Street Loading

- A. **Applicability.** Off-street loading spaces shall be provided in connection with any nonresidential or mixed use building, structure, or use which is to be erected or substantially altered to provide adequate space for off-street loading, unloading and the maneuvering of shipping and delivery vehicles and shall comply with minimum requirements specified in this Section.
- B. **Use Restrictions.** No storage of any kind nor motor vehicle repair work or service of any kind shall be permitted within any required loading space. In addition, this area shall not be used in the count for off-street parking spaces for the use.
- C. **Size and Number of Spaces.** The uses required to provide off-street loading/unloading space and the quantity and size of said space required shall be:
1. *Retail Repair, Sales, and Service Uses.* One loading space with minimum dimensions of 12 feet by 25 feet for every 20,000 square feet of Gross Leasable Area rounded off to the nearest 20,000.
 2. *Office Uses and Overnight Accommodations Uses Over 50,000 Square Feet.* One loading space with minimum dimensions of 12 feet by 25 feet for every 50,000 square feet of Gross Leasable Area rounded to the nearest 50,000. This requirement shall only apply to Office and Overnight Accommodation uses with or 50,000 square feet of gross leasable area.
 3. *Industrial and Wholesale Trade Uses.* These uses shall provide the loading spaces with a minimum dimension of 12 feet by 25 feet in accordance with Table 3.03.04, Loading Space Ratios.

Table 3.03.04 Loading Space Ratios	
Gross Leasable Area	Minimum Loading Spaces Required
Up to - 50,000 sq. ft.	1 space
50,000 - 120,000 sq. ft.	2 spaces
120,000 - 220,000 sq. ft.	3 spaces
220,000 - 350,000 sq. ft.	4 spaces
350,000 - 550,000 sq. ft.	5 spaces
550,000 - 850,000 sq. ft.	6 spaces
Each additional 400,000 sq. ft.	1 additional space

- D. **Location.**
1. *Same Lot.* Off-street loading areas shall be located on the same lot as the principal use and be designed to have minimal impacts on pedestrian areas.
 2. *Orientation.* Loading and unloading areas shall be placed, to the greatest extent possible, to the rear of the structure and shall be screened from the view of any street and/or any residentially developed or residentially zoned property. Additionally, loading/unloading spaces shall be located such that interference with traffic on streets and or internal driveways is minimized. In the event that a loading dock is necessary to support the proposed use, the dock shall be located to the rear of the structure and shall not be visible from any street and/or residentially developed or residentially zoned property.
- E. **Design.** To minimize impacts, off-street loading areas shall comply with the following standards.
1. *Lighting.* Any lighting used to illuminate off-street loading or unloading areas may not glare on any right-of-way or adjacent property and shall comply with Chapter 4.
 2. *Location and Visibility from Streets.* Not be located within 40 feet of the nearest point of intersection of any two streets with no loading dock visible from a thoroughfare or collector street right of way;

3. *Screening.* All loading areas shall be effectively screened in one of the following manners on each side adjoining or fronting on any property situated in a residential zoning district:
 - a. The loading area shall be enclosed by a roofed or unroofed and a wall between the principal building and the property boundary line (as depicted in Figure 3.03.04, Illustrative Example of Enclosed Loading, below). The walls of the enclosure shall be tall enough to completely screen the delivery vehicle and shall be designed and constructed with architectural elements such as windows, awnings, or other features that complement the exterior of the principal building. The portion of the buffer between the enclosed loading and the property line may be reduced by one level with the remainder of the buffer yard being the type required by this ordinance for the applicable character district; or
 - b. Alternatively, the loading area shall be screened along its length by a buffer per Section 3.04 that has one additional level of opacity (for example, from a Type B bufferyard to a Type C bufferyard) than required by and, additionally, the loading area shall contain an eight-foot tall masonry wall that is designed and constructed to complement the primary exterior finish materials or design of the principal building.
4. *Surfacing.* Off-street loading areas shall be surfaced with pavement, concrete, or equivalent and designed to properly drain.

Figure 3.03.04
Illustrative Example of Enclosed Loading



3.03.05 Stacking

- A. **Generally.** Stacking spaces are used to measure the capacity of a drive-through lane to hold cars while transactions are taking place at drive-through stations. Stacking spaces shall measure 8 feet wide by 20 feet long and provide direct access to a service window. The position in front of a drive-through station (e.g., a service window, ATM, or station at a drive-through bank) is counted as a stacking space.
- B. **Required Stacking Spaces.** All drive-in and drive-through facilities shall provide vehicle stacking in accordance with Table 3.03.05, *Required Vehicle Stacking Spaces*, and as depicted in Figure 3.03.05, *Vehicle Stacking Illustration*.
- C. **Other Uses.** Uses other than those set out in Table 3.03.05, *Required Vehicle Stacking Spaces*, that propose drive-through service shall provide a number of stacking spaces as approved by the Administrator, based on a functional comparability to a use that is listed in the Table 3.03.05.

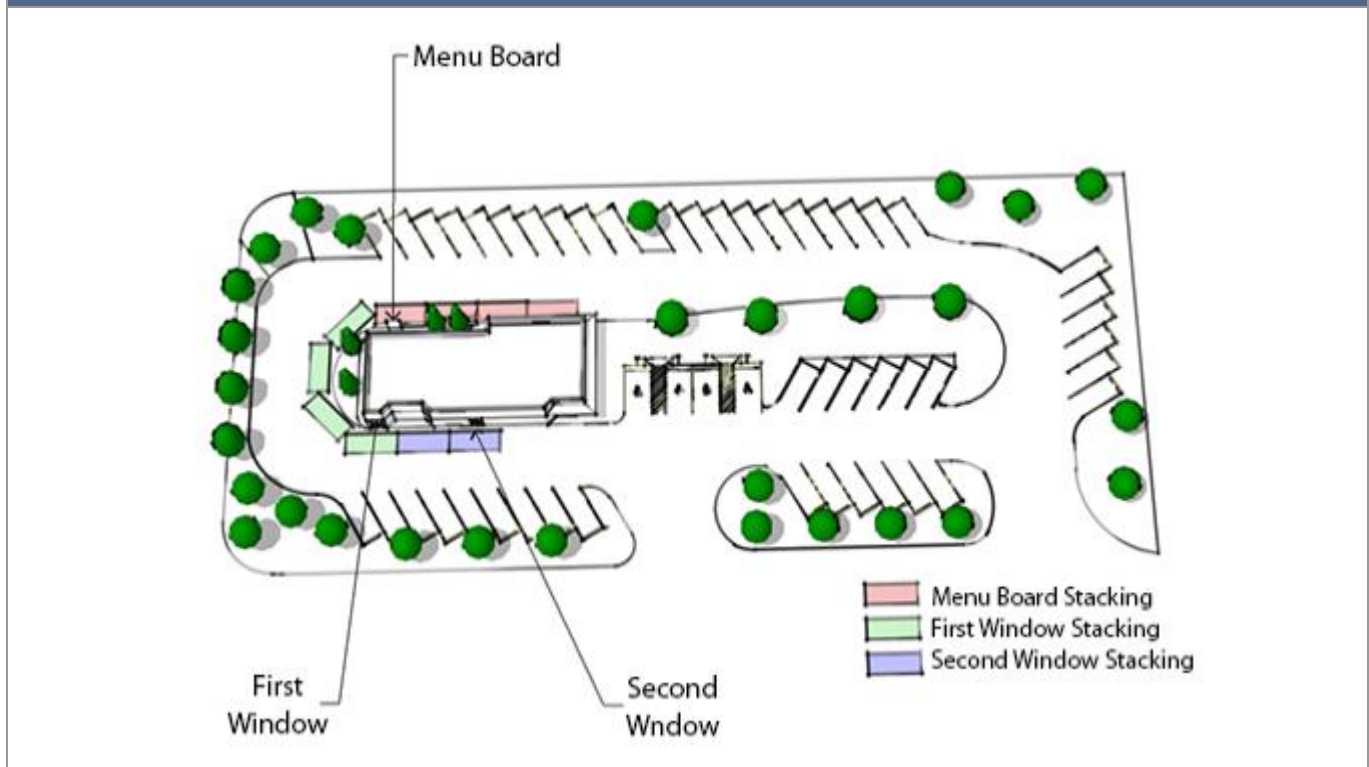
Table 3.03.05 Required Vehicle Stacking Spaces	
Use with Drive-Through	Stacking Requirement
Restaurant, Fast Food	4 spaces behind menu board, 4 spaces behind first window, 2 spaces behind second window, including position at second window (see Figure 3.03.05, <i>Vehicle Stacking Illustration</i>)
Financial Institution	For single drive-through lane: 6 spaces For multiple drive-through lanes: 4 spaces per window/kiosk For ATMs (attached to a building or stand-alone): 3 spaces per window/kiosk
Pharmacy	4 spaces per drive-through station
Convenience or Grocery Store	4 spaces per drive-through station
Dry Cleaner	2 spaces per drive-through station, including position at window
Car Wash	For automatic washes: 2 spaces per bay at entrance; two vehicles per bay at exit For self-service washes: 2 spaces per bay at entrance; 2 spaces per bay at exit For full-service washes: 2 spaces per bay at entrance; 2 spaces per bay at exit
Fuel Sales	2 spaces per fuel pump (1 per side)
Gated Parking Lots	2 spaces per gate
Public Uses	2 spaces per window/kiosk

D. **Reduction of Stacking Requirements.**

1. *Reduction of Spaces or Dimensions.* The Planning Director may approve a reduction of the stacking requirements of this Section upon demonstration by a qualified traffic engineer that a reduction in the stacking requirements is appropriate for the applicant's proposed use given its proposed intensity or context.
2. *Minor Adjustment.* Minor deviations of these requirements that reduce the stacking distance by less than one stacking space may be approved by the Planning Director without a demonstration by a licensed traffic engineer if the applicant demonstrates that strict compliance with this Section is impracticable or would lead to a lower quality of site design.

- C. **Location.** Stacking areas shall not be located between the facade of a building and the public street upon which the building fronts.
- D. **Design.**
1. *Bypass Lane.* Stacking lanes shall be designed with an abutting 10-foot wide bypass lane.
 2. *Width.* The minimum pavement lane width for a stacking space shall be eight feet.
 3. *Striping.* Stacking lanes shall be clearly marked, and shall not interfere with on-site or off-site traffic circulation.

Figure 3.03.05
Vehicle Stacking Illustration



3.03.06 Access

- A. **Access Management.** All site plans shall be reviewed for access management. Access management is the implementation of design 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. **Curb Cuts.**

1. *Design.* Points of ingress and egress shall be via openings in concrete, asphalt, rock or other curbing provisions, commonly referred to as curb cuts in accordance with the town driveway requirements and the approval of the N.C. Department of Transportation when involving a state road.
 2. *Width.* In no case shall a curb cut or other access point be less than ten feet nor more than 30 feet in width.
 3. *Maximum Number.* No more than two curb cuts per lot shall be permitted except in commercial or industrial districts where two shall be permitted on each street upon which the lot fronts or as allowed as part of a special use permit.
 4. *Distance Between Points.* The distance measured along the right-of-way line between the edges of adjacent access points shall be at least 25 feet.
 5. *Setback.* Unless the access point will be shared between two or more adjoining properties, all access points shall be located at least five feet from all property lines perpendicular to the street.
- C. **Shared Access.** Wherever feasible, access points to town or state roads shall be designed to provide shared access to parking lots by abutting properties, and shall be designed to channel traffic onto side streets, preferably those with traffic signalization, thereby reducing the number of curb cuts.
- D. **Design.**
1. *Hazard Reduction.* The number, width and location of curb cuts shall be such as to minimize traffic and pedestrian hazards.
 2. *Distance Requirements.* No curb or other access point shall be located closer than:
 - a. Twenty feet from the intersection point of the street's rights-of-way or property lines involved.
 - b. Thirty feet from the access point to any street intersection.
- E. **Markings.** All curb-cuts and driveways that intersect sidewalks shall include pedestrian markings of zebra stripes, textured asphalt stamping such as streetprint, or brick pavers or other material that visually designate the pedestrian thoroughfare and connects to the sidewalk.

3.03.07 Right-of-Way, Design Standards, and Driveway Regulations

- A. **Purpose, Applicability, and Intent.**
1. *Purpose.* The purpose of this Section is to provide:
 - a. Owners of abutting property with the maximum service feasible, consistent with the safe and efficient use of streets;
 - b. A uniform ordinance for the design, location, operation and construction of driveways throughout the Town; and
 - c. Maximum safety and protection to the public through the regulation of vehicles entering and exiting public streets.
 2. *Applicability.* This Section shall apply to all driveways or access points planned to connect to a Town maintained street. The provisions of this Section shall regulate only that portion of a private driveway that connects to a public street and extends to the edge of a public right-of-way.
 3. *Intent.* The Town's intent is to further increase safety and decrease congestion along specified major thoroughfares. In order to accomplish these objectives, certain goals have been identified. These goals are:
 - a. To prohibit driveways within a certain distance of intersecting streets unless alternate access is not available,

- b. To decrease the number of driveways along major thoroughfares, and
 - c. To increase the distance between adjacent driveways along major thoroughfares.
- B. **Enforcement.** This Section is to be administered by the Public Works Director or their designee(s). The issuance of a Driveway Permit as prescribed by this Section shall be issued by the Public Works Director or their designee(s) for driveways that access a street maintained by the Town and issued by the North Carolina Department of Transportation for driveways that access a street maintained by the state.
- C. **Safety.** The safety and efficiency of a roadway is impacted by the amount and type of interference experienced by the vehicles moving on it. Some interference may result from other vehicles on the roadway, moving in either the same or the opposite direction. The major form of interference, however, is from vehicles entering, leaving, or crossing the roadway at intersecting streets and driveways. In order to reduce interference with traffic flow, minimize accidents and assure the best overall utilization of the roadway by the motoring public, it is necessary to regulate vehicles entering and leaving roadside developments and intersecting streets.
- D. **Right of Access.** The Town recognizes the legal rights of the abutting property owners to have access to their property. However, it must also consider the right of other roadway users to travel with relative safety and freedom interference. Since these rights are at times in conflict, it is the Town's responsibility to reconcile and, to the extent feasible, satisfy the needs and desires of all roadway users.
- E. **Distance Between Driveways.**
 - 1. Single-family and duplex developments on individual lots of record shall not be located within any site triangles.
 - 2. Residences shall not have more than two driveways. If two driveways are installed, there shall be no less than ten linear feet separating the two driveways.
- F. **Design Standards.**
 - 1. *Driveway Width and Curb Flare or Radius.* The width of a driveway approach and curb return flare or radius shall be within the minimum and maximum limits as specified in Table 3.03.07, Driveway Width and Curb Flare Radius, below. All driveway approach widths shall be measured at the street right-of-way line and the width of any driveway shall not increase when crossing the right-of-way except at properly designated curb returns. The width and radius of street type driveways and width of private street entrances shall be determined by the Public Works Director within the limits of this ordinance.

Table 3.03.07 Driveway Width and Curb Flare Radius				
Land Use/Driveway Type	Driveway Width		Flare/Radius	
	Minimum	Maximum	Minimum	Maximum
Residential-Single Family	12	20	1	3
Multi-family	24	36	10	30

Table 3.03.07
Driveway Width and Curb Flare Radius

Land Use/Driveway Type	Driveway Width		Flare/Radius	
	Minimum	Maximum	Minimum	Maximum
Commercial/Industrial	24	36	5	10
Commercial/Industrial one-way	15	20	5	10
Private Street Entrance	24	48	30 ¹	30 ¹
Street Type Driveway	24	36	0	30
TABLE NOTE: ¹ radius only				

2. *Length.* All residential driveways shall be at least 18 feet in length from the edge of the pavement where the structure begins to the edge of the pavement where the sidewalk or street begins.
3. *Approaches.* All driveway approaches shall meet the standards below, except where exemptions are listed.
 - a. All driveway approaches shall be a concrete apron section ("ramp" type), except that street type driveway entrances may be required for public or private developments that have parking spaces for 200 or more vehicles or when special conditions exist as determined by the Public Works Director.
 - b. The concrete apron shall be installed to the right-of-way line or at least 10 feet from the edge of the roadway and/or back of curb.
 - c. Ramp type driveway approaches may use either a standard drop curb opening or curb radius from the street curb to the inside sidewalk line. If a curb radius used, the top elevation of the curb radius must be held level with the elevation of the street curb, and the driveway apron must be raised to meet the elevation of the curb at the inside sidewalk line.
 - d. Driveway approaches shall cross the sidewalk area at the sidewalk grade established by the Public Works Director. The sidewalk shall be constructed separately from the driveway apron. The driveway angle shall be 90 degrees, unless engineering considerations dictate otherwise, as approved by the Public Works Director.
 - e. Where special pedestrian or vehicular hazards may be encountered, driveway approaches may be restricted to one-way operation. Such driveways shall be clearly signed and marked as one-way driveways using pavement arrows and directional signs. Failure to erect and maintain such signs or the failure to use these driveways in accordance with the signing and marking shall be considered a violation of this ordinance.
4. *Medians and Islands.* Medians or islands may be permitted for street type driveways and private street entrances only, upon approval of the Public Works Director and subject to the following conditions:
 - a. The raised median or island shall be constructed on private property to the rear of the right-of-way line;
 - b. The minimum width of the median or island as measured nearest the right-of-way line (excluding the nose) shall be six feet or as required by the Public Works Director.
 - c. The minimum length shall be 50 feet;
 - d. For street type driveways with a median or island, the combined width of pavement of the separated driveway segments shall not exceed 48 feet; and

- e. Medians and islands shall not be permitted for ramp-type driveways.
- 5. *Sight Triangles*. Sight Triangles for intersections of driveways and public streets shall be regulated in accordance with other standards in this UDO.



CHAPTER 7: ADMINISTRATION

Contents:

- § 7.01 General Provisions
- § 7.02 Administrative Provisions
- § 7.03 Legislative and Quasi-Judicial Bodies
- § 7.04 Administrative Bodies

§ 7.01 General Provisions

7.01.01 Title

This code is adopted by reference in Appendix A of the Town of Black Mountain Code of Ordinances and shall be known as the *Unified Development Ordinance* of the Town of Black Mountain.

7.01.02 Purposes

- A. **Generally.** The purpose of this UDO of the Black Mountain Code of Ordinances is to provide regulations for the subdivision of land and guidelines for its development, in order to protect and promote the health, safety and general welfare of the town in accordance with the General Statutes of the State of North Carolina and the Town of Black Mountain Code of Ordinances. It is also the intent of the Town of Black Mountain Town Council that this land use code implement the planning policies reflected in the town's adopted comprehensive plan and other current, adopted planning documents, and that these regulations be easy to understand and that all processes required be simple and efficient.
- B. **Protection.** These policies are intended to protect individual property values and development rights while:
1. Maintaining the small town character and community identity of the town;
 2. Promoting social, cultural and economic diversity in our community;
 3. Promoting a vibrant downtown district that encourages small business development and preserves the historical integrity of the existing buildings;
 4. Providing a network of safe and convenient transportation options that accommodate freight, automobiles, transit vehicles, pedestrians and bicyclists;
 5. Preserving our natural resources, parks, open spaces, and view-sheds;
 6. Minimizing risk to property and water quality from flood damage and stormwater;
 7. Protecting environmental health and safety from natural and manmade disasters;
 8. Providing a variety of housing types for citizens of all income levels, ages and physical abilities; and
 9. Creating economic opportunities through organized development patterns that encourage investment and the redevelopment of blighted areas.

7.01.03 Authority and Jurisdiction

These regulations are adopted pursuant to the authority granted by Chapter 160D of the North Carolina General Statutes (NCGS). The provisions of this code shall be applicable to all property within the town limits.

7.01.04 Conflicts of Interest

NCGS Chapter 160D-109 shall govern financial and other conflicts of interest related to legislative and quasi-judicial bodies and administrative officials.

7.01.05 Enactment, Effective Date, and Repeal

- A. **Enactment.** The enactment of this UDO shall repeal and replace the previously adopted Zoning Ordinance and Subdivision Ordinance, that was in place prior to the effective date of this UDO as noted below.
- B. **Effective Date.** The effective date of this UDO is the later of:
 - 1. _____; or
 - 2. The date that the Town Council adopts the Official Zoning Map, which is _____.

§ 7.02 Administrative Provisions

7.02.01 Applicability of UDO

These regulations are adopted pursuant to the authority granted by Chapter 160D of the North Carolina General Statutes (NCGS). The provisions of this code shall be applicable to all property within the town limits.

7.02.02 Plan Consistency

- A. **Generally.** This UDO is intended to implement the goals, objectives, and policies of the Comprehensive Plan. Any amendments to, or actions pursuant to the UDO shall be consistent with the Comprehensive Plan.
- B. **Amendments to Text.** Any amendment to the UDO must conform to the goals of the Comprehensive Plan. Any amendment to the zoning map must be consistent with the future land use map contained in the Comprehensive Plan and/or the purpose statement for the zoning district found in Chapter 2.

7.02.03 Conformity with UDO

Any administrative body vested with the authority to make a final decision on a development review application under this UDO may not issue an approval for any use, structure, subdivision, or improvement that conflicts with any provision of this UDO.

7.02.04 Abrogation and Conflicting Provisions

- A. **Abrogation.** Except for those provisions of the Town Code explicitly repealed upon the adoption of this UDO, this UDO is not intended to repeal, abrogate, or impair any existing public or private laws, easements, covenants, or deed restrictions.
- B. **Conflict.**
 - 1. *Public Restrictions.* The following provisions apply to laws adopted by a federal, state, or local legislative body.
 - a. Where this UDO conflicts with another local, state, or federal law, whichever the Director finds imposes the more stringent restrictions controls. Where the Planning Director finds conflicting provisions to be equally stringent, then the provision more recently adopted controls.
 - b. Where the text of this UDO conflicts with its tables or illustrative material, the text controls. Where a table of this UDO conflicts with an illustration, the table controls.

2. *Private Restrictions.* The Town does not interpret or enforce private restrictions, including, but not limited to, deed restrictions, covenants, or easements, unless it is a party to them. If the Town is a party to private restrictions, and such restrictions conflict with this UDO then the more stringent restrictions control.

7.02.05 Minimum Requirements

- A. **Generally.** Regulations set forth by this UDO shall be minimum regulations. If the requirements set forth in this UDO are at variance with the requirements of any other lawfully adopted rules, regulations or ordinance, the more restrictive or higher standards shall govern.
- B. **Interpretation.** In the interpretation and administration of this UDO, all provisions shall be:
 1. *Minimum Requirements.* Considered as minimum requirements for promotion of the purposes of this UDO; and
 2. *Construed in Favor.* Liberally construed in favor of the Town.

7.02.06 Severability

- A. **Generally.** If a court of competent jurisdiction holds any provision of this UDO to be illegal or invalid, the remainder of this UDO shall remain in full force without being affected by the judgment.
- B. **As-Applied.** If a court of competent jurisdiction holds any application of a provision of this UDO to a particular structure, land, or water to be illegal or invalid "as-applied", such judgment shall not be applicable to any other structure, land, or water not specifically included in the judgment.

7.02.07 Transitional Provisions

- A. **Approvals.** Any building, structure, or development for which legislative development approval shall not require any change in the plans, construction, size, or designated use of any building, structure, or part thereof for which a building permit has been granted prior to the effective date of this UDO or any amendment thereto.
 1. *Completion.* Any building, structure, or development shall 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.
 2. *Delay in Construction.* Should construction of any outstanding permit not begin within a period of 180 days subsequent to the passage of this UDO or any amendment thereto, or where it has not been prosecuted to completion within 18 months subsequent to the passage of this UDO or any amendment thereto, any further construction or use shall be in conformity with the provisions of this Ordinance or any such amendment.
 3. *No Building Permit.* If a Building Permit is not obtained according to the requirements of the prior Zoning Ordinance, Subdivision Ordinance, or the applicable permit terms, the Town Council may, for good cause shown, grant and extension for the:
 - a. Development approval for up to one year for the purpose of obtaining a Building Permit under the terms of the previously applicable UDO; or
 - b. Building permits so that any building, structure, or development may be constructed, completed, or occupied only in compliance with this UDO.
- B. **Pending Applications.** Applications that are not pursued with due diligence may expire in accordance with other timelines within this UDO.

7.02.08 Fees

The Town Council may adopt a schedule of fees for permits and processing costs associated with the administration of these development regulations.

- A. **Fees to be Paid.** No application shall be processed until the established fee has been paid.
- B. **Refund of Fees.** Application fees are not refundable except where the Planning Director determines that an application was accepted in error, or in the event the fee paid exceeded the amount due, the amount of the overpayment will be refunded to the applicant.

7.02.09 Vested Rights

- A. **Generally.** A statutory vested right is established when:
 - 1. A site-specific vesting plan is approved;
 - 2. A final plat is approved for the initial phase of a multi-phase development;
 - 3. A development agreement is approved and entered into pursuant to Chapter 160D, Article 10 of the North Carolina General Statutes;
 - 4. For all other types of development, when a development permit has been issued;
- B. **Amendments.** During the period that a statutory vested right exists, no amendment to this land use code shall be applicable or enforceable without the written consent of the owner, except as specifically provided in this section.
- C. **Overlay Exceptions.** The establishment of a vested right shall not preclude the application of overlay zoning that imposes additional requirements but do not affect the allowable type or intensity of use, or regulations that are general in nature and are applicable to all property subject to the regulations of the Development Regulations of the Town of Black Mountain, including, but not limited to flood hazard prevention, building, fire, plumbing, electrical and mechanical codes and general regulations of the town.
- D. **Not a Personal Right.** A vested right is not a personal right but shall attach to and run with the land. Successors in title may exercise such right under the same conditions and for the same time that the original applicant could have exercised such right.
- E. **Common Law Principles.** Nothing in this section shall be construed to preclude the establishment of a vested right under one or more common law principles.
- F. **Expiration.** A development permit or approval shall expire, and the period of vested rights shall terminate, unless work authorized by the permit has substantially commenced, on the date which is:
 - 1. For a site-specific vesting plan, as specified below;
 - 2. For a multi-phase development of at least 25 acres, seven years from the date the site plan for the initial phase of the development was approved by the planning board;
 - 3. Specified in the approved development agreement;
 - 4. For all other development permits or approvals, the date which is one year from the date the permit was issued or approval was given, whichever is later;
 - 5. For an incomplete development project in which development work is intentionally and voluntarily discontinued, the date which is two years from the date work was last performed on the site.
- G. **Substantial Commencement.** Substantial commencement of work shall be determined by planning director based on any of the following:
 - 1. The development has received and maintained a valid erosion and sedimentation control permit and conducted grading activity on a continuous basis and not discontinued it for more than 30 days;
 - 2. The development has installed substantial on-site infrastructure; or

3. The development has received and maintained a valid building permit for the construction and approval of a building foundation.
- H. **Extension.** Development permits or approvals, other than site-specific vesting plans, that would otherwise expire, may be extended for additional periods of one year if the permit-issuing authority determines that:
1. The permit has not yet expired;
 2. The permit holder has proceeded with due diligence and in good faith; and
 3. Conditions have not changed so substantially as to warrant a new application.
- I. **Site-specific Vesting Plans.** The following types of development approvals are site-specific vesting plans for purposes of this section:
1. Any development for which a special use permit is required;
 2. Major and minor subdivisions.
 3. Conditional zoning designation.
- B. **Conditions.** Approval of a site-specific vesting plan may contain conditions as provided in this code. Conditional approval establishes a vested right for purposes of this section, except that a condition that a variance be obtained does not confer a vested right unless and until the necessary variance is obtained.
- C. **Follow-Up.** Approval of a site-specific vesting plan may be conditioned upon subsequent reviews by the approving authority or administrative staff to ensure compliance with the terms and conditions of the original approval.
- D. **Revocation.** Approval of a site-specific vesting plan may be revoked for failure to comply with applicable conditions.
- E. **Action by the Town.** Once established, a vested right pursuant to a site-specific vesting plan precludes any action by the town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of property allowed by these development regulations, except under one or more of the following conditions:
1. With the written consent of the affected landowner;
 2. The town council, by ordinance issued after notice and a public hearing, determines that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan;
 3. To the extent the landowner receives compensation for all costs, expenses, and other losses incurred, together with interest as provided in N.C.G.S. § 160D-106;
 4. The town council, by ordinance issued after notice and a public hearing, determines that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the approval authority of the site-specific vesting plan; or
 5. A state or federal law or regulation precludes development as contemplated, in which case the approval authority may modify the affected provisions upon a finding that the change in state or federal law has a fundamental effect on the plan.
- F. **Time Limit.** A vested right for a site-specific vesting plan remains vested for a period of two years from the date the first development approval or permit is issued for the site. The period of vested rights may be extended by the approving authority for subsequent periods of one year each up to a total of five years.
- G. **Permit Choice.**

1. If an applicant submits a complete application for a development permit or approval and a development regulation is amended before the permit decision, the applicant may choose which version of the rule or ordinance (the former version or the new version) applies to the application.
2. When a development requires multiple permits, the applicant may choose the version of each of the applicable development regulations upon submittal of the application for the initial development permit. This provision is applicable for subsequent development permit applications filed for the same development project within 18 months of the date following the approval of the initial permit. For purposes of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

H. Vested Rights Relative to Annexation.

1. A vested right may be established for a single- or multi-tract development outside of the town's jurisdiction but seeking voluntary annexation upon the effective date of the town's action or ordinance relating thereto and as described in a preliminary plat or master plan approved by the town planning board and the town council. In such cases, the following also apply:
 - a. Approval of a site-specific development plan may contain a variance from the proposed zoning district or other terms and conditions as may reasonably be necessary to protect the health, safety, and welfare of the citizens of the town and of the prospective residents or businesses of the proposed development.
 - b. A petition for annexation filed with the Town of Black Mountain under N.C.G.S. § 160A-31 or N.C.G.S. § 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under N.C.G.S. § 160D-108.
 - c. A statement that declares that no zoning vested right has been established under N.C.G.S. § 160D-108, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.
2. The applicable zoning district shall be established at the time of annexation.

§ 7.04 Administrative Bodies

7.04.01 Technical Review Committee

- A. Generally.** A regulatory body to be known as the Technical Review Committee (TRC) is hereby established for the purpose of:
1. Administering the requirements of this UDO;
 2. Ensure that all information necessary to determine compliance with this UDO has been provided;
 3. Formulating staff recommendations;
 4. Rectifying review comments between Town departments and referral agencies; and
 5. Providing cohesive and timely review of subdivision applications.
- B. Membership.**
1. The TRC shall be comprised of the Town staff designated by the Director and representatives from each referral agency that reviews development projects in conjunction with the Town.
 2. Based on the nature of a development, TRC meetings can be limited to those staff and agencies affected by the development, or can be expanded to include additional agencies or staff with review responsibilities

- C. **Powers and Duties.** The TRC shall have the authority to make recommendations.
- D. **Meetings.** TRC meetings shall be convened by the Director, as necessary.

7.04.02 Planning Director

- A. **Powers and Duties Relative to Matters in this UDO.** The Planning Director or their designee shall have the authority to make final decisions where another authority is not listed.
- B. **Powers and Duties Relative to Matters Outside of this UDO.** In addition to the powers and duties set forth above, the Planning Director shall perform duties as outlined in the remainder of the Town Code.

7.04.05 Floodplain Administrator

- A. **Designation of the Floodplain Director.** The Planning Director or his/her designee, hereinafter referred to as the "Floodplain Director", is hereby appointed to administer and implement the provisions of this Section.
- B. **Powers and Duties.**
 - 1. *Recommendations and Final Decisions.* The Floodplain Director shall have the authority to make recommendations or final decisions on the development review applications.
 - 2. *Other Powers and Duties.* The Floodplain Director shall have the following additional powers and duties. The Floodplain Director:
 - a. Shall maintain and hold open for public inspection all records pertaining to the floodplain provisions of this UDO;
 - b. Shall review permits for proposed development to assure that all necessary permits have been obtained from those federal, state, or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required;
 - c. May, under the provisions of CFR Title 44, Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, approve certain development in zones A1-30, AE, AH, on the City's FIRM which increases the water surface elevation of the base flood by more than 1 foot, provided that the City first completes all of the provisions required by CFR Title 44, Chapter 1, Section 65.12, Section 65.12.
 - d. Shall require that no new construction, substantial improvements, or other development (including fill) be permitted within zones A1-30 and AE on the community's Flood Insurance Rate Map (FIRM), when a regulatory floodway has not been designated, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community; and
 - e. Shall maintain a record of all actions involving a Floodplain Variance and shall report such Variances to FEMA upon request.
 - f. Shall obtain, review, and reasonably utilize any base flood elevation data and floodway data available from a federal, state, or other source.
 - g. Shall notify North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA); and

- h. Shall make the necessary interpretation, where interpretation is needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions).



CHAPTER 8: DEVELOPMENT REVIEW PROCEDURES

Contents:

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§ 8.01 Purpose, Applicability, and Common Review Procedures

8.01.01 Purpose

The purpose of this Section is to consolidate and standardize the Town's development review procedures and to establish development review duties related to recommendations, final decisions, and appeals.

8.01.02 Applicability

- A. **Generally.** The Sections of this Chapter apply to all development activity that requires a recommendation or final decision from a legislative, quasi-judicial, or administrative body denoted in this UDO.
- B. **Compliance with UDO and Comprehensive Plan.** All development review applications applicable to a proposed development must be issued in accordance with the provisions of this UDO, prior to any development activity. Development review approvals are required for all development, unless otherwise excepted, to ensure compliance with the various adopted codes, standards, and laws and to ensure consistency with the Comprehensive Plan.
- C. **Sequence of Development Approval.** Where more than one development review application is required by this UDO in order to initiate, continue, or complete a development, administrative bodies shall make final decisions in the following sequence. An administrative body shall make final decisions on:
 - 1. Legislative applications prior to final decisions on all other applications;
 - 2. Quasi-judicial applications prior to final decisions on subdivision or administrative applications;
 - 3. Subdivision applications prior to final decisions on administrative applications; and
 - 4. Applications within the same category.
- D. **Approval Run with Land.** Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this Section attach to and run with the land per N.C.G.S. 160D-104.
- E. **Revocation of Development Approval.** Development approvals may be revoked by the Town by notifying the land owner or holder of the approval in writing in accordance with N.C.G.S. 160D-403(f).

8.01.03 Pre-Application Conference

- A. **Purpose.** To minimize development planning costs, promote public safety, avoid misunderstandings or misinterpretation and ensure compliance with requirements, a pre-application consultation between applicants and the town staff with a sketch plan is encouraged for all projects and required for some to allow for technical review at the beginning of the planning process.
- B. **When Required.** A pre-application consultation and technical review is required for:
 - 1. Work impacting the exterior of any structure within the historic district;

2. Major and minor subdivisions;
 3. Special Use permits;
 4. A Conditional zoning;
 5. Any work within a flood hazard area as indicated on the FIRM maps; or
 6. Projects within the ICD, OI-6, or CB districts; or
 7. Projects adjacent to an Overlay District.
- C. **Sketch Plan Required.** A sketch plan of the project should be prepared for the consultation, drawn approximately to scale (1 inch = 60 feet). Sketch plans for subdivisions, special use permits and institutional campus development have specific, additional requirements. All sketch plans shall contain at a minimum the following information as applicable:
1. The name and address of the developer;
 2. Total acreage of the subject parcel;
 3. The proposed site layout, including street and lot arrangement, designation of driveways, parking lots, open space, greenways, and stormwater management areas;
 4. Topographic lines and drainages; and
 5. Other information believed necessary to obtain the opinion of the planning department staff as to the proposed project's compliance with the requirements of this code.
- D. **Meeting and Application Advancement.** The Planning Director and other appropriate Staff shall meet with the property owner or developer as soon as conveniently possible to review the sketch plan and to provide technical comments. Staff shall review the application and confer with the applicant to ensure that the applicable requirements have been met and that the application represents what the applicant proposes to do. Staff will then determine the necessary approval process and prepare recommendations or a report and documentation for advancing the project through the appropriate channels, such as the Historic Preservation Commission, the Planning Board, and/or the Board of Adjustment, or other Board or Commission.

8.01.04 Application Submittal and Completeness

- A. **Applications Requiring Applications Submittal.** All development review applications are required to undergo the application submittal process.
- B. **Forms and Fees.** Every development review application required by this UDO shall be submitted in a format and in numbers established by the Planning Director and shall include the corresponding application fee that is established by the Town Council.
- C. **Location of Applications.** Application forms are available through the on-line portal and on the town's website.
- D. **Authorization to Initiate an Application.**
1. *Owner.* The owner of a parcel may initiate an application.
 2. *Applicant is not the Owner.* If the applicant is not the owner of the land, or is a contract purchaser of the property, a letter signed by the owner consenting to the submission of the application shall be submitted.
 3. *Applicant is not the Sole Owner.* If the applicant is not the sole owner of the land, a letter signed by the other owners, an association representing the owners, or their authorized agent consenting to or joining in the application for approval shall be submitted.
- E. **Simultaneous Processing.** Whenever two or more forms of review and approval are required under this ordinance (e.g., a rezoning, development agreement or a special use permit), the applications for those development approvals may, at the option of the planning director, be processed simultaneously, so long as

all applicable state and local requirements are satisfied for each application. However, whenever these development regulations require two types of review for the same approval (e.g., a master plan for subdivision and a final plat for subdivision), those two review and approval procedures must be completed as separate steps in the order specified.

- F. **Refunds.** Fees for a rejected, denied, expired, voided, or revoked application are not refundable.
- G. **Deadlines.** Any application, sketch plan, master plan, or plat that must go before the Planning Board, Historic Preservation Commission, Board of Adjustment, or Town Council must be submitted at least 14 days prior to the regularly scheduled meeting in order to be placed on that meeting's agenda.
- H. **Applications Requiring Completeness Review.** All development review applications are required to undergo completeness review.
- I. **Director Responsibility.** The Planning Director shall review all development review applications for completeness.
- J. **Meaning of Completeness.** The burden of presenting a complete application to the planning department or to the permit issuing board shall be upon the applicant. Applications will not be acted upon until such time as the application is complete. An application shall be deemed complete if it is submitted in the required form, includes all requested information, and is accompanied by the applicable fee. A determination of application completeness shall be made within five working days of application filing. If an application is determined to be incomplete, the planning director shall provide written notice to the applicant along with the explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected. If the deficiencies are not corrected by the applicant within 20 working days, the application shall be considered withdrawn.
- K. **Completeness Does Not Equate to Approval.** A determination of completeness does not mean that:
 - 1. *Accuracy.* The contents of the submittal are accurate or that they comply with the standards of this UDO;
 - 2. *Recommendation.* The application will receive a positive recommendation or final decision from the applicable administrative body; or
 - 3. *Clarification.* During the review, additional clarification or information will not be needed.
- L. **Amendment.** An applicant may revise a development application for any of the following reasons:
 - 1. To address deficiencies provided as part of the technical review;
 - 2. To make limited changes that directly respond to specific requests or suggestions made by a reviewing board or staff in response to a reviewing board, as long as they constitute only minor additions, deletions, or corrections and do not include substantive changes to the development proposed in the application. Additional application fees to defray the additional costs of processing the revised application may be required; or
 - 3. To have the application reviewed under a new rule or ordinance change that went into effect after the applicant received a written notice of application submittal acceptance, but prior to receiving a written decision on the application.
 - 4. For any other amendment for which approval has not been granted, the application shall be withdrawn and a revised application shall be submitted and reviewed as a new application. The revised application may be subject to additional application fees to defray the additional costs of processing the revised application.
- M. **Withdrawal of Application.** The applicant may withdraw an application at any time by submitting a written request to the Planning Director. Withdrawal will result in the forfeiture of all Town fees paid by the applicant for the processing of the application.

- N. **Successive Applications.** The Planning Director shall not accept any application requiring that is substantially similar to an application that was denied at a public meeting or hearing 12 months prior. However, the Planning Director may accept such an application within that time period if he or she finds there is new and different evidence that was not reasonably available at the time of the original hearing or that the application has substantially changed from the original.
- F. **Burden of Project Completion.** The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of these development regulations remains at all times on the applicant.

8.01.05 Staff Review and Distribution

- A. **Applications Requiring Staff Review and Distribution.** All development review applications are required to undergo staff review and distribution.
- B. **Final Decision or Distribution.** After completeness determination, the Planning Director shall:
 - 1. *Review and Comment.* Review the Administrative application and provide comments to the applicant, which may include required revisions;
 - 2. *Review and Decide.* Review and make a final decision on the Administrative application or provide the application to the administrative body empowered by this UDO to review and make a final decision on the application; or
 - 3. *Distribute.* Distribute the Legislative, Quasi-Judicial, or Subdivision application to the appropriate review body or outside agency for recommendation or final decision.
- C. **Required Revisions.**
 - 1. *Comments.* During application review, the Planning Director may provide comments from development review bodies, where applicable, to the applicant. The applicant shall then revise and resubmit the application with requested changes.
 - 2. *Resubmittal.* Upon receipt of the resubmittal, the Planning Director may refer the application to relevant development review bodies again if the changes substantially affect the interests of the agency in ways not anticipated by the reviewer's original comments, or require the reviewer's technical expertise for appropriate review.
- D. **Administrative Recommendation or Decision.** Promptly after submittal of a complete application that addresses the comments provided pursuant to Subsection C, Required Revisions, above (or, after finding that no revisions are required):
 - 1. *Administrative Applications.* If the application is for an administrative review procedure, Town Staff shall approve, conditionally approve, or deny the application, as appropriate. Applications receiving approval may subsequently undergo the processes established in Subsection [8.01.09](#), Post-Approval Provisions.
 - 2. *Legislative, Quasi-Judicial, and Subdivision Applications.* If the application requires a public meeting or public hearing prior to a final decision, then the applicable Town staff shall forward a recommendation to the next development review body in the review process, according to [8.01.12](#), Development Review Summary, who will consider it for further recommendation or final decision.
- E. **Common Decision Criteria.** In addition to all other applicable provisions of this UDO, development review bodies shall consider the provisions of [8.01.06](#), Common Decision Criteria, when making a recommendation or a final decision.
- F. **Continuing Review Process.** Applications requiring a public meeting or hearing, according to [8.01.12](#), Development Review Summary, shall subsequently undergo the processes established in [8.01.07](#), Public Notice, and [8.01.08](#), Public Meetings and Hearings, as applicable.

8.01.06 Common Decision Criteria

- A. **Generally.** In determining whether to approve, approve with conditions or modifications, or deny an application, the applicable development review bodies shall consider the basic review criteria denoted in Table 8.01.06, *Common Decision Criteria Applicability*. Additional review criteria may apply and are enumerated in the specific review procedures of this Section.

Table 8.01.06 <i>Common Decision Criteria Applicability</i>			
Common Decision Criteria	All Applications ¹	Legislative Applications	Quasi-Judicial Applications ¹
The request complies with the applicable standards of this UDO and the Town Code, and the applicant has provided proof of compliance with any preceding and applicable county, state, or federal requirements.	◆		
The request substantially conforms to any associated prior approval for the development, including, but not limited to: Special Use Permit, Conditional Zoning, Site Development Plan, etc.	◆		
The request promotes the purposes of this UDO as established in 8.01.01, Purposes , and in other applicable purpose statements in this UDO.	◆		
The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, or general welfare	◆		
The administrative body has considered the recommendation of Staff in the public meeting or hearing.		◆	◆
The request is consistent with applicable policies of the most recently adopted Comprehensive Plan, any applicable utility plans, and adopted capital improvements plans; or, if it addresses a topic that is not contained or not fully developed in the Comprehensive Plan, the request does not impair the implementation of the Comprehensive Plan.		◆	◆
Adequate facilities, including public or private utilities, solid waste service, roads, drainage, and other improvements are present or are planned to be provided.		◆ ²	◆ ³
The request demonstrates compatibility with surrounding conforming and permitted land uses and structures and with the essential character of the general vicinity of design, façade treatment, setbacks, building materials, and reasonably anticipated negative impacts.		◆ ²	◆

TABLE NOTES:

◆ = Basic review criteria applies

¹ Excluding Appeals of Administrative Decisions

² Excluding UDO Text Amendments

³ Excluding Variances

- B. **Procedures With Common Decision Criteria.** Section 8.01.12, *Development Review Summary*, denotes the development review procedures that have common decision criteria.
- C. **Written Findings.** Required findings for a legislative or quasi-judicial decision, based on basic and specific review criteria for an application, shall be in writing and shall be recorded in the minutes and records of the appropriate Board or Council.
- D. **Burden of Proof or Persuasion.** In all cases, where there is doubt or question, the burden is on the applicant to show that an application complies with applicable decision criteria.

8.01.07 Public Notice

Public Notice shall be provided as required by NCGS §160D, as amended. The Town of Black Mountain may elect to provide additional notice, but at a minimum will meet the standards as required by the State of North Carolina.

8.01.08 Public Meetings and Hearings

- A. **Generally.**
 - 1. *Meetings and Hearings.* The Town Council, Planning Board, Board of Adjustment, and Historic Preservation Commission shall hold regularly scheduled public hearings to receive and review public input on those items required by this UDO and the North Carolina General Statutes. All public meetings and hearings related to applications in the UDO shall be open to the public. However, not all decisions require public hearings. Therefore, recommendations and decisions that are authorized by this UDO are classified as requiring a "public meeting" or "public hearing."
 - 2. *Votes.*
 - a. A vote shall be conducted in such manner that the public may know the vote of each person entitled to vote.
 - b. All recommendations and final actions at a public meeting or hearing shall require a simple majority vote unless otherwise indicated in this UDO for a specific development review procedure.
- B. **Procedures Requiring Public Meetings and Hearings.** Section 8.01.12, *Development Review Summary Table*, denotes the development review procedures that require public meetings and public hearings.
- C. **Public Meetings.**
 - 1. *Public Meeting Required.* Any legislative or quasi-judicial application that does not require a public hearing prior to a recommendation or final decision requires a recommendation or final decision to be made at a public meeting.
 - 2. *Consent Agenda.* Any legislative or quasi-judicial development review body may establish a consent agenda. The consent agenda may consist of all matters brought before the body for final decision that do not require a public hearing. All items on the consent agenda may be approved simultaneously by motion without comment or debate. An item may be removed from the consent agenda prior to the approval at the request of any member of the development review body present at the meeting, or by the Planning Director. Items removed from the consent agenda shall be considered on the regular agenda.
- D. **Public Hearings.**

1. *Generally.* All meetings of the Town Council, Planning Board, Board of Adjustment, or Historic Preservation Commission shall be open to the public except as otherwise provided for in the North Carolina General Statutes.
 2. *Procedures.* Elected and appointed administrative/advisory bodies may adopt rules of procedure for the conduct of public hearings. The adopted rules of procedure shall reflect the following general procedures:
 - a. The Chairperson may impose a reasonable time limit on speakers and may limit testimony that is irrelevant or redundant.
 - b. Citizens, applicants, and the Town have the right to present expert witnesses.
 - c. Persons appearing at a public hearing shall identify themselves and state their address and similar information about any organization they represent.
 - d. If a speaker represents an organization, the development review body conducting the hearing may request written evidence of that person's authority to speak on behalf of the group in regard to the matter under consideration.
 - e. Any person may appear at a public hearing, submit evidence, and be heard.
 3. *Attendance by Applicant at Public Hearing.* An applicant or representative is not required to attend the public hearing at which the subject application is to be considered; however, failure on the part of the applicant or representative to appear at a properly noticed public hearing may constitute grounds for a continuance of the hearing to a certain new date or closing of the public hearing with public re-notification required.
 4. *Parties with Standing.* Parties with standing shall be permitted to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments; may allow non-parties to present competent, material, and substantial evidence that is not repetitive.
 5. *Continuances.* If a public hearing is continued for a given date and a quorum of the development review body is not then present at the continued hearing, the hearing shall be continued until the next regular meeting without further advertisement.
- E. **Final Action.** An development review body with authority to take final action on an application according to [8.01.12](#), Development Review Summary, may approve, approve with modifications (in the case of an UDO Text Amendment), approve with conditions (in the case of all other applications), or disapprove an application.
- F. **Conditional Approval.**
1. *Ability.* At a public meeting or hearing, an development review body may attach special conditions to any decision it is authorized to make in order to ensure that the intent of the UDO will be carried out.
 2. *Requirements.* Conditional approval requires that the specific conditions and the reasons be stated in writing and be agreed to by the applicant. Such conditions are binding upon the applicant.
- G. **Continuing Review Process.**
1. *No Final Decision.* Applications not decided upon at a public meeting or hearing may be subject to [8.01.11](#), Inactive or Expired Applications.
 2. *Final Decision.* Applications decided upon at a public meeting or hearing may be subject to [8.01.10](#), Appeals of Legislative, Quasi-Judicial, and Subdivision Decisions.

8.01.09 Post-Approval Provisions

- A. **Written Approval.** All development approvals shall be made in writing, in print or electronic form, and may contain a provision requiring the development to comply with all applicable State and local laws.

- B. **Notification.** Written notice of determination shall be delivered by personal delivery, electronic mail, or first class mail to the property owner and the party seeking determination, if different from the owner.
- C. **Conditional Approval or Modification of Application at Public Meeting or Hearing.**
1. *Modification.* An applicant may agree to modify an application, including the plans and specifications submitted, in response to questions or comments by persons appearing at a public meeting or hearing or to suggestions or recommendations by the development review body holding the meeting or hearing.
 2. *No Further Action.* Unless such modifications are so substantial that the development review body determines that it cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised application materials, the development review body may make a recommendation or conditionally approve the application with the requirement that the formalized approval is not effective until the applicant submits materials reflecting the agreed upon changes to the Director. A development review body shall not accept any subsequent application and shall make no further approvals related to the subject property until the applicant submits the required modifications.
 3. *Referral.* Where deemed appropriate by the final decision making body, modifications may be referred back to the recommending body for review, prior to further consideration.
- D. **Modification of an Approved Application.** Except as provided below, modifications to approved applications shall be done in accordance with Section 8.02.15, Minor Modification of an Approved Application, or if the change does not meet the criteria for a minor modification, the application shall be resubmitted as a new application.
- E. **Correction of Errors in Approved but Unrecorded Plats.**
1. *Director Review and Approval.* An approved but unrecorded Final Plat that is found to contain an insignificant error, including, but not limited to, scriveners errors or typographical errors, may be corrected by the applicant, upon approval by the Planning Director.
 2. *Development Review Committee Review and Director Approval.* The Planning Director may approve other minor corrections to an approved but unrecorded Final Plat, including, but not limited to, the addition, deletion or relocation of easements, after review by the Development Review Committee.
- F. **Revocation of Approval.** If a person fails to comply with the terms of a permit or development approval, the responsible enforcement official may revoke the permit or development approval.
- G. **Disapproval of Subsequent Permits and Development Approvals.** As long as a violation of these development regulations continues and remains uncorrected, the planning director may withhold, and the planning director and other town boards may disapprove, any request for permit or development approval or authorization provided for by these development regulations for the land on which the violation occurs.
- H. **Repeat Violations.** After a notice of violation, warning citation or civil citation has been issued, any re-erection or display of the same noncompliant signage or any repeat of the same zoning offense, within a 12-month period, which is in violation of this chapter on the same premises shall be considered a continuance of the original violation.
- I. **Approvals Run With Land.** Unless a legislative or quasi-judicial development review body conditions an approval to the contrary, permits or approvals authorizing a particular land use or structure shall run with the land and transfer with the subsequent ownership of the land and structures.
- J. **Recordation of Plat.** The applicant shall record any approved plat with the County Clerk within the time limits of 8.01.12, Development Review Summary, or the plat shall expire.
- K. **Affidavit of Compliance.** Whenever any application approved pursuant to this UDO is made subject to conditions to be met by the applicant, the applicant shall upon meeting such conditions file an affidavit with the Planning Director stating such compliance. The applicant shall have two years from the date of approval to

complete any necessary construction and submit the affidavit of compliance with conditions. Failure to submit the affidavit of compliance with conditions within the stated timeframe will revoke the original request.

8.01.10 Appeals of Legislative, Quasi-Judicial, and Subdivision Decisions

- A. **Generally.** Section 8.01.12, Development Review Summary, denotes the development review applications that are subject to appeal.
- B. **Appeal of Town Council, Board of Adjustment, or Historic Preservation Commission Decision.** Any party aggrieved by or alleging an error in a final decision of the Town Council, Board of Adjustment, or Historic Preservation Commission, or a final decision of the Planning Board not related to a Preliminary or Final Plat, may appeal to a court of competent jurisdiction according to procedures set forth in the North Carolina General Statutes.
- C. **Appeal of Subdivision Decisions.** Appeals of Preliminary or Final Plats shall be subject to review by filing an action in a court of competent jurisdiction seeking appropriate declaratory or equitable relief by proceedings in the nature of certiorari in accordance with NCGS §160D-1402. The appellant shall file the appeal within 30 days from receipt of the written notice of the decision.
- D. **Appeal of Administrative Decision.**
 - 1. The Board of Adjustment shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official charged with the enforcement of the town's development regulations.
 - 2. An appeal is taken by filing a notice of appeal with the town clerk. The notice of appeal shall state the grounds for the appeal.
 - 3. An appeal of an administrative decision must be made within 30 days from receipt of the written notice of the administrative decision, which written notice shall be delivered to the person seeking the determination and the owner of the property that is the subject of the determination. Any other person who has standing under N.C.G.S. § 160D-1402(c) or the town may appeal a decision to the board of adjustment within 30 days from receipt of actual or constructive notice of the determination. In the absence of evidence to the contrary, notice given pursuant to N.C.G.S. § 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.
 - 4. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten days. Position of a sign is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided by the official who made the decision.
 - 5. The owner of the property that is the subject of the decision and the party who sought the decision, if different from the owner, shall be entitled to written notice of the appeal. The written notice shall be delivered by certified mail, return receipt requested, personal delivery, electronic mail, or by first-class mail
 - 6. The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the applicant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

7. An appeal of a notice of violation or other enforcement order stays the enforcement of the action appealed from and accrual of fines assessed unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulations. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that proposed use of property is consistent with the development regulations shall not stay the further review of an application for development approval to use such property; in these situations, the appellant or local government may request, and the board may grant, a stay of a final decision of development approval, including building permits affected by the issue being appealed.
8. Subject to the provisions of subsection 6. of this section, the board of adjustment shall hear and decide the appeal within a reasonable time.
9. The official who made the decision, or the person currently occupying that position if the decision-maker is no longer employed by the local government, shall be present at the hearing as a witness. The appellant shall not be limited at the evidentiary hearing to matters stated in a notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. When hearing an appeal, the board may reverse, affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all of the powers of the official who made the decision.
10. When hearing an appeal pursuant to N.C.G.S. § 160D-9047(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in N.C.G.S. § 160D-1402(k).
11. Any aggrieved party may appeal from the decision of the board of adjustment to the Superior Court of Buncombe County in the nature of certiorari. Any such petition for writ of certiorari shall be filed no later than 30 days after a written copy of the decision of the board of adjustment is delivered as provided in section 1.7.1.D.6.

8.01.11 Inactive and Expired Applications

- A. **Automatic Expiration.** Unless otherwise specifically provided for in this UDO, development applications shall automatically expire and become null and void, and all activities taken pursuant to such development application shall cease and become null and void, and all activities pursuant to such approval thereafter shall be deemed in violation of this UDO, when:
 1. *Satisfaction of Condition.* The applicant fails to satisfy any condition that was imposed as part of the original or revised approval of the application, or that was made pursuant to the terms of any development agreement, including the failure to abide by specified time limits established in the agreement; or
 2. *Subsequent Required Applications.* The applicant fails to present a subsequent development application as required by this UDO within the time so required by this UDO or North Carolina law.
- B. **Reference.** Refer to Section [8.01.12](#), Development Review Summary, for the expiration times for approved applications that may expire due to inactivity of the applicant.
- C. **Expiration Dates.**

1. *Final Action Date.* Each time period referenced in this UDO shall run from the date of the final action of the applicable development review body.
2. *Failure to Provide Date.* In order to assure that all applicants for actions, approvals, or permits are informed of the applicable time limit, the date of final action and the expiration date shall be shown on each such action, permit or approval. However, failure of the Planning Director to include either the date of final action or the expiration date shall not be deemed to be a waiver of such dates nor shall it be the basis of any action by the applicant to challenge the applicable expiration date. The burden is on the applicant to know the date of issuance and the expiration date. If either or both of such dates are not shown, the applicant may request, and the Planning Director shall promptly supply such date or dates.

D. Extension.

1. *Generally.* All actions, approvals, or permits shall expire on the expiration date unless a valid extension has been granted on or before the expiration date.
2. *Original Extension.* Unless otherwise prohibited by North Carolina State Statutes or this UDO, the Planning Director may extend the time for expiration of an approved development review application for a period not to exceed one year from the date of the original decision granting approval, if the application for extension is made in writing within the original period of validity. Subsequent extensions may be made by the final approval body upon finding that conditions at the time of approval have not changed.
3. *Additional Extensions.*
 - a. There shall be no additional extensions by the Planning Director of any time limits for a development review applications. Any extensions must be expressly requested by the applicant, in writing, and approved by the appropriate administrative official or legislative or quasi-judicial development review body which originally took the final action.
 - b. Before granting an extension, the Planning Director or legislative or quasi-judicial development review body shall determine whether any applicable changes in this UDO have occurred which would impose new requirements with respect to such final action, if an extension were denied, and the applicant were compelled to re-file a new development review application. If changes have occurred, the Planning Director or legislative or quasi-judicial development review body shall balance the burden imposed on the applicant if required to re-file a new application against the benefit accruing to the public by requiring the applicant to comply with the new regulation.
4. *Revocations.* The revocation of a development proposal shall follow the same process as the development approval as stated in N.C.G.D 160D-403(f).

- E. Continued Applications.** If an applicant requests to hold action on their application for a legislative or quasi-judicial action, the application may be held to the next meeting from the originally scheduled appearance. If the applicant still desires no action be taken on said application, it must be withdrawn. In the event an application is withdrawn under this provision, it may not be submitted for the same property for 90 days.

8.01.12 Development Review Summary Table

- A. **Generally.** This Section summarizes procedures required for obtaining development review approval pursuant to this UDO.
- B. **Applications and Procedures.** Each application required by this UDO is spelled out in Table 8.01.12-1 *Summary of Procedures*, below.

Table 8.01.12-1
Summary of Procedures

Development Application (Reference Standards)	Submittal Timing	Expiration ¹	Review Responsibilities		Public Notice
			Recommendation	Final Action	
ADMINISTRATIVE APPLICATIONS: Involve decisions made in the implementation, administration, or enforcement of this UDO that involve the determination of facts and the application of objective standards set forth in this UDO.					
Site Development Plan (8.02.02)	Prior to construction of: a nonresidential or mixed use development, a multi-family development, or a use that requires a site plan.	12 months	Planning Director		N/A
Exempt Plats (8.02.03)	Prior to any development approval requiring a Major Site Plan	12 months	Planning Director		N/A
Construction Plans (8.02.04)	Timing at the discretion of the Planning Director	12 months	Planning Director		N/A
Zoning Clearance (8.02.05)	Prior to the issuance of a building permit or other permit that would have an impact of any zoning regulation in the UDO	8.02.05	Planning Director		N/A
Building Permit (8.02.06)	Prior to a building or other structure being erected, moved, added to, or structurally altered.	12 months	Building Official		N/A
Demolition Permit (8.02.06)	Prior to demolition or removal of any structures, pavements, landscaping (if applicable), or other permanent structures.	12 months	Building Official		N/A
Floodplain Development Permit (8.02.07)	Prior to any construction or other development begins within the Flood Protection Overlay District	12 months	Floodplain Administrator		N/A
Driveway Permit (8.02.08)	Prior to the construction of any new access point to a publicly maintained street	12 months	Planning Director		N/A
On-Site Water or Wastewater Facility Permit (8.02.09)	Prior to installation or groundwork/preparation of a site in conjunction with the installation of an on-site water or wastewater facility.	12 months	Planning Director		N/A
Sign Permit (8.02.10)	Prior to installing or substantially modifying a sign	12 months	Planning Director		N/A
Temporary Use Permit (8.02.11)	Prior to the operation of any temporary structure or use	Per Section 2.04.09	Planning Director		N/A

Table 8.01.12-1
Summary of Procedures

Development Application (Reference Standards)	Submittal Timing	Expiration ¹	Review Responsibilities		Public Notice
			Recommendation	Final Action	
Certificate of Occupancy and Compliance (8.02.12)	Prior to land being used and prior to a building or addition being occupied, converted, enlarged, or structurally altered, wholly or partly	12 months	Planning Director		N/A
Certificate of Nonconformity Adjustment (8.02.13)	Prior to any enlargement, expansion, or other alteration of any nonconforming use or structure	12 months	Planning Director		Refer to Sec. 8.02.13
Written Interpretation (8.02.14)	As necessary for interpretation and application of provisions of this UDO	None	Planning Director		N/A
Minor Modification of an Approved Application (8.02.15)	Prior to any of the permitted modifications allowed without a new site plan	Same as application being adjusted	Planning Director		N/A
Administrative Adjustment (8.02.17)	In order to make a limited modification to any numerical standard on an application that has already been approved but that has not received a Certificate of Compliance and Occupancy	Same as application being adjusted	Planning Director		N/A
LEGISLATIVE APPLICATIONS: Involve the adoption, amendment, or repeal of a regulation this UDO and the decision to establish or change the way the use, design, or development of land will occur on a site-specific, Town-wide, or intermediate scale. Elected and appointed administrative bodies make final decisions based on general considerations of fostering and preserving the public health, safety, and general welfare, including the Town's fiscal well-being. Such final decisions are characterized by the exercise of broad discretion.					
UDO Text Amendment (8.03.01)	None	N/A	1st: Planning Director 2nd: PB	TC	8.01.07
Zoning Map Amendment (8.03.02)	Prior to establishing or expanding a building type or use prohibited in the current character district	N/A	1st: Planning Director 2nd: PB	TC	8.01.07
QUASI-JUDICIAL APPLICATIONS: Involve final decisions involving the finding of facts regarding a specific application of a development regulation in this UDO and that requires the exercise of discretion when applying the standards of the regulation.					
Variance (8.04.01)	Prior to any development approval requiring a variance	12 months	Director	BOA	8.01.07

Table 8.01.12-1 Summary of Procedures					
Development Application (Reference Standards)	Submittal Timing	Expiration ¹	Review Responsibilities		Public Notice
			Recommendation	Final Action	
Special Use Permit (8.04.03)	Prior to establishing any use requiring a Special Use Permit	12 months	1st: TRC 2nd: Director	BOA	8.01.07
Appeal of Administrative Decision (8.04.04)	Within 30 days of the official decision	12 months	Planning Director	BOA	8.01.07
SUBDIVISION APPLICATIONS: Require final decisions related to dividing larger tracts of land into smaller lots. Town staff or legislatively appointed administrative bodies take final action based on regulations in this UDO and on technical requirements of various Town departments, local and state agencies, and utilities. Such final decisions are characterized by limited discretion.					
Final Plat (Minor and Family Subdivisions 8.05.01 or Major Subdivision 8.05.02)	Prior to developing a Minor or Major Subdivision or making a minor modification to a recorded plat, after Preliminary Plat approval, and after either: 1) Acceptance of public improvements; or 2) Approval of performance bond.	30 days ³	TRC	Director	N/A
TABLE NOTES: PB=Planning Board, TC=Town Council, BOA=Board of Adjustment, HPC=Historic Preservation Commission, TRC=Technical Review Committee ¹ Measured from the date of the issued approval. Expiration occurs if the applicant does not commence the work prior to the expiration, or does not diligently pursue completion of the project or the subsequent required approval. See 8.01.11, <i>Inactive and Expired Applications</i> . ² The subdivider has 24 months to receive Final Plat approval for the entire subdivision or for a phase of the subdivision. Approval of a Final Plat in a multi-phase subdivision renews the 24-month expiration for remaining phases in the subdivision. ³ The subdivider has 30 days to record the plat.					

- C. **Review Steps.** Table 8.01.12-2, *Review Steps*, summarizes the common review procedures involved in the development review process. Detailed information about each of these review steps is found in previous Sections.

Table 8.01.12-2 Review Steps							
Common Review Procedures (Section Reference)	Administrative Applications	Legislative		Quasi-Judicial		Subdivision	
		UDO Text Amendment	All Other	Written Interpretation	All Other	Minor and Family	Major
Pre-Application Conference (8.01.03)	--	--	•	--	•	--	•

Application Submittal and Completeness (8.01.04)	•	•	•	•	•	•	•
Staff Review and Distribution (8.01.05)	•	•	•	•	•	•	•
Common Decision Criteria (8.01.06)	•	•	•	•	•	•	•
Public Notice (8.01.07)	--	•	•	--	•	--	--
Public Meetings and Hearings (8.01.08)	--	•	•	--	•	--	•
Post-Approval Provisions (8.01.09)	--	--	•	--	•	•	•
Appeals of Legislative, Quasi-Judicial, and Subdivision Decisions (8.01.10)	--	--	•	•	•	--	•
Inactive or Expired Applications (8.01.11)	•	--	•	--	•	•	•
TABLE NOTES: • Common Review Procedure Required; -- Common Review Procedure Not Required;							

§ 8.02 Administrative Review Procedures

8.02.01 Administrative Permits

Reserved in case we add any permits. If not, we will delete.

8.02.02 Site Development Plan

- A. **Site Plan Submittal.** Site Plans shall be submitted and reviewed per the standards established in Section 8.01.06.
- B. **Applicability.**
 1. *Minor.* See 8.05.01.
 2. *Major.* See 8.05.02.
- C. **Development Approval Required.** No person shall commence or proceed with development without first securing any required development approval from the Town as stated in N.C.G.D 160D-403(a).
- D. **Form of Development Approval.** The Town shall issue written approval of a Site Development Plan in print or electronic form and may contain a provision requiring the development to comply with all applicable State and local laws. Any development approval issued exclusively in electronic form shall be protected from further editing once issued.

8.02.03 Exempt Plats

Plats that qualify as exempt under NCGS §160D shall be are exempt from the subdivision procedures of this UDO. However, prior to recording any exempt plat, all other development regulations must be met.

8.02.04 Construction Plans

- A. **Construction Plans.** Construction Plans shall be submitted and reviewed per the standards established in Section 8.01.12.
- B. **Generally.** When requested at the discretion of the Planning Director during review of the Preliminary Plat for a Minor or Major Subdivision, the applicant shall have prepared, by a professional engineer, registered in the State of North Carolina, construction plans, consisting of complete construction drawings and specifications of all easements, streets, traffic control devices, street lights, sanitary sewers, storm water facilities, water system facilities, sidewalks and other improvements required by this UDO and any additional technical manuals as adopted by the Town. Construction plans shall be submitted to the Planning Director or their designee for review and approval. All improvements required pursuant to these regulations shall be constructed in accordance with the applicable requirements of this UDO, and, where applicable, the requirements and authorization of the appropriate state agency, utility company, or local franchisee.
- C. **Installations and Improvements.** All installations of improvements shall conform to the approved construction plans. If the applicant chooses to make modifications in design and/or specifications prior to construction, such changes shall be subject to review and approval by the Planning Director or designee. It shall be the responsibility of the applicant to notify the Planning Director in advance of any changes to be made from the approved drawings. In the event that actual construction work deviates from that shown on the approved construction plans, such unapproved work shall constitute a violation of this UDO and shall be remedied in accordance with Chapter 10. The applicant shall be required to correct the installed improvements to conform to the approved construction plans. In addition, the Planning Director may take such other actions as may be deemed appropriate including, but not limited to, revocation of permits already issued and/or withholding of future approvals and permits until the violation is corrected.
- D. **As-Built Drawings.**
1. *Timing.* Prior to final inspection of the required improvements, the applicant shall submit to the Planning Director one electronic version (ESRI or CAD) and two prints of as-built engineering drawings for each of the required improvements that have been completed. Each set of drawings shall be re-certified by the applicant's engineer indicating the date when the as-built survey was made.
 2. *Contents.*
 - a. As-built drawings shall show the constructed vertical elevation, horizontal location, and size of all sanitary and storm sewers, manholes, inlets, junction boxes, detention basins, and other appurtenances or elements of the sewerage and storm drainage systems constructed to serve the subdivision.
 - b. As-built drawings shall depict water lines, valves, fire hydrants, and other appurtenances or elements of the water distribution system constructed to serve the project. Such information shall include the horizontal location and size of water lines and location and description of valves with dimensional ties.
 - c. As-built drawings shall depict the location of all street rights-of-way, alignments, widths, and vertical elevations.
 - d. As-built drawings shall show all control points and monumentation.
 3. *Sedimentation Control Standards.* In conjunction with the submittal of engineering plans and specifications, the subdivider shall be required to demonstrate compliance with the Sedimentation Control Standards of the overall area proposed to be developed. The subdivider shall cause all grading, excavations, open cutting, and similar land surface disturbances to be mulched, seeded, sodded, or otherwise protected to ensure compliance. No work shall be initiated relative to the preparation of land or the installation of general improvements until such time as all aspects of the subdivider's engineering plans and sedimentation control proposals have received approval.

8.02.05 Zoning Clearance

- A. **Conformance Required.** No building or land shall be used or occupied and no building or structure or part thereof shall be erected, moved or structurally altered except in conformity with the Town zoning regulations.
- B. **Zoning Permit Required.** No building, sign or other structure (except as otherwise provided in these regulations) shall be erected, moved, extended or enlarged or structurally altered, nor shall the use conducted within the structure change, nor shall any excavation or filling of any lot for the construction of any structure be commenced, nor substantial clearing, grading, or excavation be commenced, nor shall any change in the use of a property be commenced until a zoning permit is issued or the zoning administrator reviews and approves the issuance of permits required for such work. No zoning, building or grading permit shall be issued without first obtaining the approval of the zoning administrator who shall certify that the development described on the application complies with all existing zoning regulations.
- C. **Zoning Permit Not Required.** A zoning permit is not required, notwithstanding any other provisions of this ordinance, for the following:
 - 1. Street construction or repair;
 - 2. Electric power, telephone, telegraph, cable television, gas, water, and sewer lines, wires or pipes, or supporting poles or structures, located within a public right-of-way;
 - 3. Temporary activities undertaken by local, state or federal governmental agencies related to emergencies, such as the provision of shelter during storms, floods or other civic needs, the use of modular or mobile homes or trailers for emergency management administration, and storm or flood clean-up and repair;
 - 4. Mailboxes, birdhouses, flag poles, pump covers, and doghouses;
 - 5. Signage that meets the exemption requirements of the sign regulations;
 - 6. Interior alterations and renovations which do not alter the footprint or height of an otherwise conforming use and/or structure.
- D. **Expiration of Permits.** Any zoning permit issued in accordance with this chapter shall expire six months after the date of issuance if the work authorized by the permit has not been commenced. If after commencement the work is discontinued for a period of 12 months, the permit shall immediately expire. No work authorized by any permit that has expired shall thereafter be performed until a new permit has been secured. If the permit recipient has proceeded with due diligence and in good faith and conditions have not changed substantially so as to warrant a new application, the zoning administrator may grant extensions for periods up to six months. All such extensions may be granted without resort to the formal processes and fees required for a new permit.

8.02.06 Building Permit and Demolition Permit

- A. **Building Permit Submittal.** Building permits shall be submitted and reviewed per the standards established in Section 8.01.06, *Common Review Procedures*.
- B. **Building Permit Validity.** Building permits shall remain valid for a period of one calendar year from the first date of issuance prior to the commencement of any construction activities related to work authorized by the permit. Except where a longer vesting period is provided by statute or land development regulation.
- C. **Demolition Permits.** Demolition Permits shall be submitted and reviewed per the standards established in Section 8.01.06, *Common Review Procedures*.

8.02.07 Floodplain Development Permit

Floodplain Development Permits shall be submitted and reviewed per the standards established in Section 8.01.06, *Common Review Procedures*. All permits shall comply with Chapter 6.

8.02.08 Driveway Permit

Driveway permits shall be issued in accordance with standards found in the Town Code Chapter 43, Article III and in compliance with Street and Driveway Standards found in Chapter 5.

8.02.09 On-Site Water or Wastewater Facility Permit

- A. **On-Site Water or Wastewater Facility Permit.** Permits shall be submitted and reviewed per the standards established in Section 8.01.06, Common Review Procedures.
- B. **Lot Size Requirements.** The lot sizes required for the various Districts in this Ordinance were drawn based upon the assumption that adequate water supply and sewage disposal systems are available to each and every lot. The lack of adequate systems for one or both facilities may require larger lot areas or, in some instances, because of Health Department standards, not permit development as intended.

8.02.10 Sign Permit

- A. **Applicability.** Signs shall be erected, substantially modified, placed, painted, installed, or made visible on private property only after the issuance of a Sign Permit.
- B. **Submittal.** Sign Permits shall be submitted and reviewed per the standards established in Section 8.01.06, Common Review Procedures.
- C. **Exemptions.** A Sign Permit is not required for the following:
 - 1. *Maintenance.* Routine maintenance that does not change the area, location, or height of a sign; and
 - 2. *Exempt Signs.* Signs established in Chapter 4.
- D. **Specific Review Criteria.** In determining whether to approve, approve with conditions, or deny a Sign Permit, the applicable review bodies shall consider the provisions of Chapter 4.
- E. **Effect.** Approval of a Sign Permit shall authorize the applicant to establish the sign or set of signs permitted.

8.02.11 Temporary Use Permit

- A. **Applicability.** Temporary uses, as established in this UDO shall be established only after the issuance of a Temporary Use Permit.
- B. **Submittal.** Temporary Use Permits shall be submitted and reviewed per the standards established in Section 8.01.06, Common Review Procedures.
- C. **Specific Review Criteria.** In determining whether to approve, approve with conditions, or deny a Temporary Use Permit, the applicable review bodies shall consider the above provisions.
- D. **Effect.** Approval of a Temporary Use Permit shall authorize the applicant to establish the temporary use permitted.
- E. **Compliance.** Following the issuance of the temporary use permit, the Planning Director shall ensure that establishment and discontinuance of the temporary use are undertaken in compliance with the permit.
- F. **Fee Waiver.** The Planning Director may waive the Temporary Use Permit fee in the case of damage as a result of fire, storm, flood, or other disaster events.

8.02.12 Certificate of Occupancy and Compliance

- A. **Nonresidential.** No building used for commercial, institutional or industrial purposes shall be used or occupied, nor shall a change in occupancy occur, nor shall the use of the building or part of a building change, until a certificate of compliance and occupancy, or "C.O." is obtained from the building inspector.

B. Residential.

1. No new residential structure shall be occupied until a certificate of compliance and occupancy is obtained from the building inspector.
2. A residence shall not be converted to a non-residential use until a certificate of compliance and occupancy is obtained from the building inspector.

C. Application. Applications for a CO must be submitted to the planning department and shall be accompanied by a site plan, applicable fees, approved final plat, or other such plans and specifications as the building inspector, fire marshal and zoning administrator may require regarding the conformity of the proposed use, reuse, construction or renovation to the applicable development regulations.

D. When Issued. The CO shall be issued only when the building inspector, fire marshal and zoning administrator certify that the project is in compliance with applicable development regulations and the site and building improvements have been completed in accordance with the previously submitted and approved plans.

E. Temporary Certificate. A temporary certificate of compliance may be issued permitting occupancy for a stated period of specific portions of a building or system that the inspector finds safe for occupancy prior to final completion of the entire building or system.

8.02.14 Written Interpretation

A. Applicability. A person may request, in writing, a Written Interpretation of the a term, provision, or requirement of this UDO if the person finds that a term, provision, or requirement of this UDO is not obvious.

B. Submittal. Written Interpretation requests shall be submitted and reviewed per the standards established in Section [8.01.12](#).

C. Specific Review Criteria. In determining whether to approve, approve with conditions, or deny a Sign Permit, the applicable review bodies shall consider the following:

1. The materials or scenario posed by the applicant;
2. The plain and ordinary meaning of the terms that are subject to the application for an interpretation as set out in a dictionary of common usage;
3. The provisions of Chapter 11, Word Usage;
4. The purpose statement for the UDO Chapter, Section, or Subsection that is subject to interpretation;
5. Any provision of this UDO or the Comprehensive Plan related to the same subject matter;
6. Any technical meanings of words used in the provision subject to interpretation;
7. Other interpretations rendered by the Planning Director associated with the same or related provisions of this UDO;
8. The legislative history of the provision subject to interpretation; or
9. Sources outside of this UDO that provide additional information on the provision in question, such as technical or professional literature.

D. No Legal Advice. No written interpretation shall be construed as legal advice.

E. Final Decision. For purposes of appeal, a Written Interpretation is deemed a final decision.

F. Effect. The Planning Director may keep records of interpretations made pursuant to this Section, which he or she may periodically present to the Planning Board and Town Council.

8.02.15 Minor Modification of an Approved Application

- A. **Applicability.** An applicant may apply for approval of a Minor Modification of an Approved Application to allow insignificant changes to an approved application that has not yet received a Certificate of Occupancy, without requiring the application to go through the entire review process again.
- B. **Submittal.** Minor Modification of an Approved Applications shall be submitted and reviewed per the standards established in Section 8.01.12.
- C. **Specific Review Criteria.** In determining whether to approve, approve with conditions, or deny, the applicable review bodies shall consider the following:
 - 1. *Location of Dwellings.* A change in the location of the dwelling units does not exceed 10 percent;
 - 2. *Gross Floor Area (GFA).* An addition to a structure does not exceed 10 percent of the previously approved total GFA of the structure;
 - 3. *Location of Streets.* A change in the location of any part of proposed street alignment and lot configuration does not exceed 10 percent of the gross acreage.
- D. **Condition of Approval.** The proposal does not violate a condition of approval for the original application.
- E. **Other Modifications.** All other modifications that do not meet the Specific Review Criteria in Subsection B., above, shall require submittal of a new application.
- F. **Effect.** Approval of a Minor Modification of an Approved Application shall have the same force and effect of the original approval.

8.02.16 Adequate Public Facilities Certification

- A. **Purpose.** The purpose of an applicant proving they have adequate public facilities is to ensure adequate:
 - 1. *Level of Service.* Ensure that Public Facilities needed to support new development meet or exceed the Level of Service standards established in this Section;
 - 2. *Concurrency.* To ensure that adequate Public Facilities needed to support new development are available concurrent with the impacts of such development.
 - 3. *Comprehensive Plan Policies.* To facilitate implementation of goals and policies set forth in the Comprehensive Plan and any applicable bicycle, pedestrian, or area plan relating to the adequacy of Public Facilities and Level of Service standards; and
 - 4. *Legal Standards.* To ensure that all applicable legal standards and criteria are properly incorporated in these requirements.
- B. **Applicability.** These standards apply to:
 - 1. Application for a Preliminary Plan;
 - 2. Application for a multi-family or attached single-family residential project; and
 - 3. Application for conditional zoning.
- C. **Sufficient Information.** No application for development review subject to this Section shall be accepted, approved, granted or issued unless it is accompanied by an application which provides sufficient information to determine whether the capacity of Public Facilities is adequate to support the proposed development.

8.02.17 Administrative Adjustment of Sign Regulations

- A. **Intent.** It is the intent of the Town of Black Mountain to allow the administrative adjustment of the sign ordinance standards to provide for flexibility that is compatible with the town's character; to acknowledge the artistic creativity of sign makers, business owners, and individuals; to create visual harmony between the sign, structure, and site was consistent with the Elevate Black Mountain Comprehensive Plan and subsequent small area plans, development agreements, and form-based district codes.

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

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

§ 8.03 Legislative Review Procedures

8.03.01 UDO Text Amendment

- A. **Applicability.** A UDO Text Amendment officially changes the text of this UDO.
- B. **Submittal.** UDO text amendments shall be submitted and reviewed per the standards established in [8.01.12](#).

- C. **Planning Board Review.** No text amendment shall become effective unless it shall have been proposed by or shall first have been submitted to the Planning Board for review and recommendation.
- D. **Specific Review Criteria.** In determining whether to approve, approve with modifications, or deny a UDO Text Amendment, the review bodies shall consider the applicable common decision criteria together with the following:
 - 1. *Errors.* The amendment is necessary to correct an error or inconsistency in the UDO;
 - 2. *Necessity.* If the public necessity, convenience, general welfare, or good zoning practices justify such action; or
 - 3. *Changing Condition.* The amendment is necessary to meet the challenge of a changing condition that was not anticipated in the Comprehensive Plan.
- E. **Procedures. Board initiation of amendments.** A proposed amendment to the text of the development regulations or the official zoning map may be initiated by the town council or the planning board, whether on their own initiative or upon recommendation of any town board or commission submitted to the planning board.
 - 1. *Citizen Petitions for Amendments.* Any citizen of Black Mountain may request an amendment to the text of this code by submitting an application. Completed forms, together with any additional information the applicant feels to be pertinent, shall be filed with the planning department.
 - 2. *Only Completed Applications will be Considered.* Applications or board recommendations received at least two weeks prior to the planning board meeting shall be heard at that meeting. Any communication purporting to be a petition for an amendment shall be regarded as notice to seek relief only or an informal recommendation to the planning board, until such time as the amendment petition is filed with the planning and development department.
 - 3. *Petition Fees.* Recommendations for changes to the development regulations text that come from Town appointed boards or commissions shall not require a petition fee.
 - 4. *Proposed text and/or map changes shall be submitted to the Planning Board for review and recommendation.* The Planning Board shall, within 30 days, submit a recommendation to the Town Council with a statement describing whether the proposed amendment is consistent with the comprehensive plan and other officially adopted plans as applicable. A comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan or other officially adopted plans shall not preclude consideration or approval of the proposed amendment by the town council. If the Planning Board fails to act within the required 30-day period, the Town Council may act on the amendment without the Planning Board report.
 - 5. *Public Hearing Required.* Before enacting an amendment to the development regulations or official zoning map, the council shall first hold a public hearing.
- F. **No Retroactive Cure of Violations.** The amendment of the text of this UDO may transform a legally nonconforming situation into a conforming one. However, no text amendment shall be proposed for the sole purpose of curing a violation of any part of this UDO.
- G. **Limitations of UDO Text Amendment.** The approval of a UDO Text Amendment does not authorize any development activity.
- H. **Statement of Consistency and Reasonableness.** The Planning Board must make a statement of consistency to any request to state if the action is in alignment with the Comprehensive Plan.

8.03.02 Zoning Map Amendment

- A. **Applicability.** A Zoning Map Amendment changes the zoning district of a property on the Official Zoning Map from one district to another.
- B. **Submittal.** Zoning Map Amendment Applications shall be submitted and reviewed per the standards established in [8.01.12](#).
- C. **Required Planning Board Review.** All zoning amendments must be reviewed by the Planning Board prior to Town Council reviewing and taking action.
- D. **Specific Review Criteria.** In determining whether to approve, approve with conditions, or deny a Zoning Map Amendment, the review bodies shall consider the applicable common decision criteria together with the following:
 - 1. Whether:
 - a. The proposed rezoning is compatible with the surrounding area, or the adopted Comprehensive Plan;
 - b. There will be adverse effects on the capacity or safety of the portion of street network influenced by the Zoning Map Amendment;
 - c. Parking problems; or
 - d. Environmental impacts that the new use will generate such as excessive storm water runoff, water, air or noise pollution, excessive nighttime lighting, or other nuisances.
 - 2. Any change of character in the area due to installation of public facilities, other Zoning Map Amendments, new growth trends, deterioration, and development;
 - a. The zoning districts and existing land uses of the surrounding properties;
 - b. Whether the subject property is suitable for the uses to which it has been restricted under the existing zoning district;
 - c. Whether subject property has sufficient dimensions to accommodate reasonable development that complies with the requirements of this UDO, including parking and buffering requirements;
 - d. Whether the Zoning Map Amendment is compatible with the adjacent neighborhood, especially residential neighborhood stability and character;
 - e. The length of time the subject property has remained vacant as zoned.
 - 3. Whether there is an adequate supply of land available in the subject area and the surrounding community to accommodate the zoning and community needs; and
 - 4. Whether the existing zoning was in error at the time of adoption.
- E. **Notice Requirements.** The Town of Black Mountain will meet the required notice requirements of NCGS §160D.
- F. **Timing of Town Council Hearing.** After the Planning Board makes a recommendation, the Town Council shall hold a hearing in no more than sixty days from the date of the Planning Board meeting and decide to approve or deny the Zoning Map Amendment. Comments by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude the Town Council from considering or approving any proposed amendment.
- G. **Statement of Consistency and Reasonableness.**
 - 1. *Statement of Consistency and Reasonableness.* The Planning Board must make a statement of consistency to any request to state if the action is in alignment with the Comprehensive Plan. In addition, prior to adopting or rejecting any Zoning Map Amendment, the Town Council shall adopt a statement describing whether its action is consistent with the Comprehensive Plan and explaining why the Council considers

the action taken to be reasonable and in the public interest. This statement may consider, among other factors:

- a. The size, physical conditions, and other attributes of the area proposed to be rezoned;
 - b. The benefits and detriments to the landowners, the neighbors, and the surrounding community;
 - c. The relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;
 - d. Why the action taken is in the public interest; and
 - e. Any changed conditions warranting the amendment.
2. *Approved Map Amendment Not Consistent with Comprehensive Plan.* If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. This must also be accompanied by a note on the applicable future land use map when a zoning map amendment is approved that is not consistent with the map. However, this does not amend the text of the plan.
- H. **Concurrent Processing of Variances and Special Use Permits.** An applicant, at the time of filing an application for a Zoning Map Amendment, may elect to have any necessary Variances or Special Use Permits for the subject property be heard and acted upon in concurrence, provided Town Council approves the Zoning Map Amendment prior to the Variance or Special Use Permit being granted for the property. In acting on a Variance or Special Use Permit, the Town Council shall have the authority and operate under the requirements of the Board of Adjustment.
- I. **Limitations of Map Amendment.** The approval of a Zoning Map Amendment does not authorize any development activity.
- J. **Scope of Approval.** If the desired use is permitted by right, the applicant may file a Site Plan (if required) and, if no site plan is required, an application for zoning and any other administrative permits required by this Chapter.

8.03.03 Conditional Zoning Approval

- A. **Timing and Submittal of Application.** All applications for conditional district rezoning shall be submitted to the Planning Department by the owner or any other person having a recognized interest in the land for which the development is proposed or their authorized agent. Application forms are available through the on-line portal and on the town's website.
- B. **Content of Application.** Every application for conditional zoning shall include, at a minimum, the following:
1. 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. Proposed total density and a summary of the total land area devoted to each type of general use of land;
 3. A full list of the proposed uses consistent in character with the underlying zoning district, whether permitted by right or conditionally;

4. A proposed development schedule if the development is to proceed in phases;
 5. Identification of any required variation from existing regulations of the underlying base zoning district;
 6. A list of proposed conditions, if any;
 7. The names of all property owners and existing land uses within 200 feet of the boundary of the subject property.
- C. **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.
- D. **Technical Review Required.** Every application for conditional district zoning shall conform to the technical review requirements set out in this UDO.
- E. **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.
- F. **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.
- G. **Public Hearing Required.** Following consideration by the Planning Board, the application shall be forwarded to the Town Council for public hearing.
- H. **Notice of Hearing Required.** The Town of Black Mountain will meet the required notice requirements of NCGS §160D.
- I. **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.
- J. **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.
1. *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.
 2. *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:
 - a. The addition or removal of land from the zone;
 - b. The additional or relocation of a building or structure;
 - c. Addition or relocation of streets, roads, or driveways not contemplated in the original plan;

- d. Modification of special performance criteria, design standards, or other conditions or requirements specified by the enacting ordinance;
 - e. A change in land use or development type beyond that permitted in the enacting ordinance;
 - f. An increase in the total number of residential dwelling units; or
 - g. An increase of more than ten percent in total floor area of any nonresidential structures.
3. *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 this UDO.

8.03.05 Certificate of Appropriateness

A. Application for Certificate of Appropriateness.

- 1. Applications for a certificate of appropriateness shall be obtained from, and when completed, filed with the planning director or his or her designee. The application shall be filed two weeks prior to the next regularly scheduled meeting of the commission. Sketches, drawings, photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, additions, changes or new construction shall accompany each application. The names and mailing addresses of property owners filing and/or subject to the application, and the addresses of property within 100 feet on all sides of the property, which is subject to the application, must also be filed.
- 2. Applicants for projects involving new construction or extensive alterations and/or additions to existing structures may request a technical review with staff prior to submitting the application.

B. Major and Minor Works.

- 1. *Major works*—Major work projects involve a change in the appearance of a building or landscape and are more substantial in nature than minor work projects. Certificates of appropriateness for major works may only be approved and issued by the historic preservation commission.
- 2. *Minor works*—Minor works are those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the landmark or property in the historic district. Certificates of appropriateness for minor works may be approved and issued by the planning director or his or her designee. If an application for a certificate of appropriateness for a minor work is disapproved by the planning director, the application shall be forwarded to the historic preservation commission for consideration. No application may be denied without formal action by the historic preservation commission. All minor works applications approved by the planning director or his/her designee shall be forwarded to the commission for their information in time for its next scheduled meeting.

C. Criteria to Determine Appropriateness.

- 1. No certificate of appropriateness shall be issued unless the commission finds that the application complies with the historic district design standards.
- 2. The following review criteria, in addition to the design standards, shall be considered, where relevant, to make findings of fact indicating the extent to which the application for a certificate of appropriateness is or is not congruous with the historic aspects of the designated landmark or district:
 - a. Lot coverage, defined as the percentage of the lot area covered by primary structures.
 - b. Setback, defined as the distance from the lot lines to the building.
 - c. Building height.
 - d. Spacing of buildings, defined as the distance between adjacent buildings.

- e. Proportion, shape, positioning, locating, pattern, sizes and style of all elements of fenestration and entry doors.
 - f. Surface materials and textures.
 - g. Roof shapes, forms and materials
 - h. Use of regional or local architectural traditions.
 - i. General form and proportion of buildings and structures; and the relationship of additions to the main structure.
 - j. Expression of architectural detailing.
 - k. Orientation of the building to the street.
 - l. Scale, determined by the size of the units of construction and architectural details in relation to the human scale, and also by the relationship of the building mass to adjoining open space and nearby buildings and structures; maintenance of pedestrian scale.
 - m. Proportion of width to height of the total building facade.
 - n. Archaeological sites and resources associated with standing structures.
 - o. Effect of trees and other landscape elements.
 - p. Major landscaping which would impact known archaeological sites.
 - q. Style, material, size and location of all outdoor advertising signs.
 - r. Appurtenant features and fixtures, such as lighting.
 - s. Structural condition and soundness.
 - t. Walls—Physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape masses or combinations of these.
 - u. Ground cover or paving.
 - v. Significant landscape, archaeological and natural features.
3. The Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" shall be the sole standards used in reviewing applications of the State of North Carolina for certificate of appropriateness.

D. Demolition.

- 1. An application for a certificate of appropriateness authorizing the relocation, demolition, removal or destruction of a designated landmark or a building, structure or site within the historic district may not be denied except as provided in section subsection C below. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The commission shall reduce the period of delay if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay. During such period the commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the commission finds that a building, structure or site has no special significance or value toward maintaining the character of a district, it shall waive all or part of such period of delay and authorize earlier demolition or removal.
- 2. If the commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the town council, the demolition or destruction of any building, site or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission for a period of up to 180 days or until the town council takes final action on the designation, whichever comes first.

3. An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site or structure determined by the state historic preservation officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.
4. The town council may enact a regulation to prevent the demolition by neglect of any designated landmark or any structure or building within the established historic district. Such regulation shall provide appropriate safeguards to protect property owners from undue hardship.

E. Hearing Procedures.

1. The historic preservation commission shall receive applications for certificates of appropriateness. The commission shall review such application according to the review criteria, the historic district design standards and the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings and shall approve or disapprove such application as provided in paragraph F. of this section.
2. Prior to issuance or denial of a certificate of appropriateness, the commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application and shall give the applicant and such owners an opportunity to be heard. A written notice of the proposal shall be sent to the applicant and to owners of property (i.e., lots, parcels or tracts of land) within 100 feet of the property for which an application for a certificate of appropriateness has been applied for.
3. Applications for certificates of appropriateness shall be acted upon within 90 days after filing, otherwise the application shall be deemed approved and a certificate shall be issued.
4. Prior to the issuance or denial of a certificate of appropriateness that applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard.
5. In cases where the commission deems it necessary, it may hold an evidentiary hearing concerning an application for a certificate of appropriateness, which hearing shall follow the procedures set forth for quasi-judicial hearings in N.C.G.S. § 160D-406.
6. The historic preservation commission's final action on an application for a certificate of appropriateness shall be by the passage of a motion to take one of the following actions:
 - a. Approve the application for a certificate of appropriateness as proposed;
 - b. Approve the application for a certificate of appropriateness subject to specific conditions and/or modifications of the proposal presented in the application for a certificate of appropriateness;
 - c. Disapprove the application for a certificate of appropriateness as proposed or modified.
7. An appeal of the commission's action in granting or denying any certificate may be taken to the board of adjustment (a) by any aggrieved party, (b) shall be taken within 30 days of the written decision and (c) shall be in the nature of certiorari.
8. Written notice of the intent to appeal to the board of adjustment from the historic commission must be sent to the town clerk postmarked within 30 days following the filing of the written decision with the town clerk.
9. Appeal from the decision of the board of adjustment shall be made to the Superior Court of Buncombe County in accordance with N.C.G.S. § 160D-1402.
10. In the case of properties owned by the State of North Carolina or its agencies, appeals may be taken to the North Carolina Historical Commission which shall render its decision within 30 days from the date of

appeal by the state is received by the historical commission. The decision of the North Carolina Historical Commission shall be final and binding upon both the state and the commission.

F. Certificate Issuance; Expiration; Enforcement.

1. Passage of a motion to approve, with or without modification, an application shall constitute the issuance of a certificate of appropriateness by the historic preservation commission. The application and the duly approved minutes of the commission shall constitute the written documentation of such issuance.
2. Following the meeting a certificate shall be mailed to the property for which a certificate has been issued. The certificate shall be posted on the premises, in a location visible from the street, while the work is in progress. Minutes of a historic preservation commission meeting shall be approved before the end of the next meeting.
3. A certificate of appropriateness shall be valid for a period of six months from the date of issuance for the purpose of obtaining any development approval. A certificate of appropriateness shall expire six months after the date of issuance if the work authorized by the certificate has not been commenced. If, after commencement, the work is discontinued for a period of six months, the permit shall immediately expire.
4. Compliance with certificates of appropriateness shall be enforced by the planning director or his or her designee. Failure to comply with a certificate of appropriateness shall be a violation of the development regulations and is punishable according to established procedures and penalties for such violations. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other regulations or laws.
5. In case any building, structure, site, area or object designated as a landmark or located within the historic district is about to be demolished whether as a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the regulations, the commission or other party aggrieved by such action may institute any appropriate action or proceeding to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such a building or structure.

G. Conditions for Certain Approvals.

1. In the event that the commission, in considering an application for a certificate of appropriateness, shall find that a building or structure for which a development permit is requested is to be an authentic restoration or reconstruction of a building or structure which existed at the same location but does not meet the requirements of the underlying district, said building or structure may be authorized to be restored or reconstructed at the same location where the original building or structure was located, provided the board of adjustment authorizes such as a special exception and no use other than that permitted in the district in which such is located is made of said property. Such conditions as may be attached to the historic preservation commission approval and those conditions as may be set by the board of adjustment shall be included in any certificate of appropriateness related thereto.
2. If the commission finds that an application for a certificate of appropriateness concerning any porches, steps, posts, fences, walls or other items extending over, on or within public rights-of-way to be necessary for the authentic restoration, reconstruction or maintenance thereof, and will not impede or block pedestrian traffic or constitute a hazard to public safety, such findings shall be transmitted to the town council for its consideration in authorizing or denying such encroachments into rights-of-way.
3. If the town council authorizes such encroachment, any items restored, reconstructed or maintained on, over or within a public right-of-way shall be the responsibility of the owner, and the owner shall agree to protect and hold the Town of Black Mountain harmless against any and all liability, cost damage or expense suffered as a result of the restoration, reconstruction or maintenance thereof. The lowest point

of any such item projecting over any sidewalk shall be at least nine feet above the sidewalk immediately below.