



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 May 22, 2023
Date: May 17, 2023

The **Town of Black Mountain Planning Board** will meet on **Monday, May 22, 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 March 20, 2023, and March 27, 2023; and
3. Second Review of Chapters 2, 3, and 8.

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



**Planning Board Regular Meeting
May 22, 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 March 20, 2023, and March 27, 2023, as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Second Review of UDO Chapters 2, 3, and 8

VI. PUBLIC COMMENT

VII. COMMUNICATION FROM PLANNING BOARD

VIII. COMMUNICATION FROM STAFF

IX. ADJOURNMENT



PUBLIC NOTICE
AVISO PÚBLICO

BLACK MOUNTAIN PLANNING BOARD

REGULAR MEETING
REUNIÓN ORDINARIA

Monday, May 22, 2023, at 6:00 p.m.
Lunes 22 de mayo de 2023, a las 6:00 p.m.

The Black Mountain Planning Board will meet for their regular monthly meeting on **Monday, May 22, 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 22 de mayo de 2023 a las 6:00 p.m.** en el Ayuntamiento, 160 Midland Avenue, Black Mountain, N. C.

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

Jennifer Tipton
Senior Admin

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

Posted to the Town Bulletin Board 05/01/2023

www.townofblackmountain.org

TOWN OF BLACK MOUNTAIN PLANNING BOARD

The Black Mountain Planning Board held a workshop meeting on Monday, March 20, 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:

Chris Collins, Chair
Pam Norton, Vice Chair
Joe Laudenslayer
Lauronda Teeple
Kathy Phillips

Absent:

Rick Earley
Chas Fitzgerald

Staff:

Jennifer Tipton, Senior Admin
Russell Cate, Planner I/Zoning Administrator

The meeting was called to order at 6:05 p.m. and duly constituted and opened for business with a quorum of five (5) members.

II. ADOPTION OF AGENDA

Chris Collins made a motion to adopt the agenda as presented. The motion was seconded by Lauronda Teeple and approved by a vote of 5-0.

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 the remainder of Chapter 3, Chapter 7 and Chapter 8.

The board made the following comments:

Section 3.02.04, Multiplexes and Apartments

- B (1): remove wording about parking and move it to the parking section.
- B (4) (b): subjective – needs to have some standards
- C (3): delete this sentence

Section 3.02.05, Nonresidential and Mixed Use

- A: what is the intent of this section – is it for all nonresidential and mixed use and then there are additional requirements for CB and industrial uses? If not, then the board would like have specific districts listed.
- A (3): delete this sentence
- A (4): delete “be visually attractive by using” and replace with “use”

Planning Board Regular Meeting
March 20, 2023

- A (5): what is exterior panelized plywood
- B: downtown is too subjective and should be changed to CB
- D (1) and (2): break into smaller paragraphs that are easier to read

Section 3.02.06, Central Business District

- A: what is multi-generational housing and why is that wording used
- D (1) (a): delete
- D (2): remove and reference sign chapter
- D (3) (a): delete this sentence
- D (3) (b): rewrite sentence to read “Parapets should be embellished with brick detailing and be stepped or sloped.”
- D (3) (d): delete this sentence
- D (4) (a): delete this sentence
- D (4) (b): remove “The screening of”
- D (4) (c): delete this sentence
- D (4) (d): delete this sentence
- D (6): delete this section
- D (7): delete this last sentence
- D (8): change should to shall and delete the last sentence
- D (9): move to lighting section
- D (10): remove and reference landscaping chapter

3.02.08, Infill and Redevelopment Sites

- Look at other jurisdictions and redo this entire section

3.02.09, Sustainability and LEED Incentives

- C: does this incentive also apply to remodels?

3.03, Parking, Loading, Stacking, and Access

3.03.01, General Provisions

- D (1): remove this sentence and add CB for exceptions
- H: ask Ron if we can do this
- Parking Table:
 - Delete newspaper publishing plants
 - Break out residential into the following:
 - Single-family and duplexes - 2
 - Secondary dwellings – 1
 - Multiplexes and Apartments – 1.5

Section 3.03.02

- B (1): would like to allow more than one and would also like to verify that people can temporarily stay in one, for example if visiting family
- B (2): what do we mean by commercial vehicles?

Planning Board Regular Meeting
March 20, 2023

- D (3): rewrite first sentence to the following: “Paved parking in all developments may be in excess of the maximum up to 10% with the use of pervious pavement or pervious pavement systems.”
- Figure 3.03.02: add dimensions
- K (1): refer to tree section and make sure it conforms with that section
- K (2): can we require bicycle parking?

3.03.03, Accessibility Parking

- E: is chapter 4 the lighting chapter?

3.03.06, Access

- E (1): delete this sentence

Chapter 7: Administration

Jennifer Tipton went through this section and just noted that most of staff’s comments were word choice, such as making sure land use code and unified development ordinance are used correctly.

Chapter 8: Development Review Procedures

Ms. Tipton went through this section as well and just noted that most of staff’s comments are changing applications to development applications, making sure procedures and notification times are correct, and adding evidentiary hearings.

Section 8.01.08, Public Meetings and Hearings

- C (2): remove section about consent agenda
- D (3): make attendance required at meetings

V. OLD BUSINESS

None.

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 8:41 p.m.

Planning Board Regular Meeting
March 20, 2023

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, March 27, 2023, at 6:00 p.m. in the Board Room of Town Hall, 160 Midland Avenue.

I. CALL TO ORDER

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

Chris Collins, Chair
Pam Norton, Vice Chair
Kathy Phillips
Lauronda Teeple
Joe Laudenslayer
Rick Earley
Chas Fitzgerald

Staff:

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

The meeting was called to order at 6:09 p.m. and duly constituted and opened for business with a quorum of six (6) members. Pam Norton arrived late.

II. ADOPTION OF AGENDA

Lauronda Teeple made a motion to adopt the agenda as presented. The motion was seconded by Chas Fitzgerald and approved by a vote of 6-0.

III. ADOPTION OF MINUTES

Joe Laudenslayer made a motion to adopt the minutes of February 23, 2023, as written. The motion was seconded by Chas Fitzgerald and approved by a vote of 6-0 (Chris Collins abstained from voting).

Chas Fitzgerald noted a change under new business in the February 27, 2023, minutes. Lauronda Teeple made a motion to adopt the minutes of February 27, 2023, as amended. The motion was seconded by Chas Fitzgerald and approved by a vote of 6-0 (Chris Collins abstained from voting).

IV. NEW BUSINESS

1. Rezoning Request for 99999 Chinquapin Hill

The rezoning request for 99999 Chinquapin Hill is to go along with the voluntary annexation request. Russell Cate went through the staff report and noted that the original request was for the zoning designation of UR-8. Mr. Cate noted that the UR-8 zoning district is not compatible with the zoning designation of R-LD from Buncombe County, which is what the property is currently zoned. The Planning Board discussed the zoning designation at the February meeting with the annexation request and felt that SR-2 was a better option due to the topography and lot sizes. Mr. Cate noted that the SR-2 zoning designation is more in line with the R-LD County zoning district. Chas Fitzgerald made a motion to recommend the zoning designation of SR-2 to the

Planning Board Regular Meeting
March 27, 2023

property known as 99999 Chinquapin Hill because it is consistent the Comprehensive Plan because it provides for larger lot sizes and works better with the slope and environmental challenges. The motion was seconded by Chris Collins and approved by a vote of 7-0.

2. UDO Sections for Review

Kelli McCormick went through the notes made by Planning Board, staff, and Ron Sneed. During the conversation, it was decided to add some additional criteria for incentives and to come back with some additional language about commercial vehicles. Due to this additional information, these sections will come back to the board for consensus at the next meeting.

V. OLD BUSINESS

None.

VI. PUBLIC COMMENT

None.

VII. COMMUNICATION FROM PLANNING BOARD

Chris Collins had a few notes for the rest of the UDO process. He asked the consultant review the comments before the meeting, suggested that staff and the consultant have a meeting to talk about minor comments (i.e., typos, grammatical errors, word choice, etc.), and share the Zoom link with all board members. It was also suggested that the next sections highlight what language is existing and what language is new and Jessica Trotman said that the annotated outline provides that information. Staff will send out the annotated outline with the next sections.

VIII. COMMUNICATION FROM STAFF

Jessica Trotman said that she expects some lulls in the near future as we start nearing the point of public input. Ms. Trotman also noted that FEMA will have to review our floodplain sections before they can be adopted by Council, so she is going to try and send those sections as soon as possible to FEMA so that we can hopefully adopt the ordinance in its entirety rather than without those sections. Ms. Trotman said that the outline is that with draft one, we will accept public comments and hold two listening sessions. Those comments will be compiled and brought back to Planning Board. Illegal and mean-spirited comments will be noted but put aside. Planning Board will decide which comments will go into the second draft. The second draft will be for the joint session with Planning Board and Town Council, which will then lead to the third draft. The third draft will be for the public hearing. We will have a better timeline after we receive the first draft and we hope to get that in late spring or early summer.

VX. ADJOURNMENT

With no further business, the meeting was adjourned at 8:24 p.m.

Prepared by:

Chris Collins, Chair

Planning Board Regular Meeting
March 27, 2023

Jennifer Tipton, Senior Admin

UDO Summary

Chapter 2: Zoning Districts and Land Uses

Chapter overview: Chapter 2 addresses the purpose and applicability of zoning districts and land uses, the official zoning map, and zoning districts. In addition, the chapter addresses zoning districts and standards, highway overlay districts, land use standards, and measurements and allowances.

Items coming over from existing Code: zoning districts, conditional districts, existing conditional districts, highway overlays, limited use standards, conditional zoning, special use permits, accessory uses, measurements, and specific allowances.

Significant changes:

- Traditional Neighborhood Development (TND), Institutional Campus Development (ICD), and land that is part of *The Settings* will be conditionally rezoned
- The following overlay districts are removed:
 - Wellhead Protection
 - Pedestrian
 - Flood Damage
- Introduces a Purpose and Applicability section, a New and Unlisted uses section, and a Land Use Matrix
- Separates out temporary use and structure standards
- In the Land Use Matrix, minor revisions are made to the use categories
- In the Limited use Standards (“L” uses, formerly “A”), minor revisions are made to the uses
- In Measurements and Allowances, a figure that is “Illustrations of Measurements and Methodologies” is added



CHAPTER 2: ZONING DISTRICTS AND LAND USES

Contents:

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

§ 2.01 General Provisions

2.01.01 Purpose and Applicability

These zoning regulations are adopted to provide guidelines for the development of land in Black Mountain, pursuant to the authority granted in N.C.G.S. § 160D-702, consistent with the General Statutes of the State of North Carolina in compliance with the Comprehensive Plan.

2.01.02 Official Zoning Map

- A. **Designation of Zoning Map.** The map entitled Town of Black Mountain Zoning Map as adopted by the Town of Black Mountain Town Council and certified by the town clerk establishes the official zoning and overlay districts. This map will be maintained and posted at the Town of Black Mountain Planning and Development Department. Digital and paper copy versions of this map shall also be made available through the planning and development department for reference.
- B. **Same Effect as UDO.** The Official Zoning Map for the Town and all boundaries, notations, references, and other information shown on the map are incorporated by reference and made a part of this UDO and have the same legal force and effect as the UDO.
- C. **Official Zoning Map Adopted.** Zoning districts are shown on the map entitled "Official Zoning Map" of the Town of Black Mountain which is made part of this UDO.
- D. **Interpretation of the Zoning Map.** Where the map appears to be unclear regarding the location of district boundaries, the Planning Director, or at the Planning Director's discretion, the Board of Adjustment shall make a determination using the following criteria:
 - 1. *Rights-of-Way or Easements.* Unless otherwise specified, zoning district boundaries run with property lines or the centerline of streets, alleys, or other rights-of-way. Where the location of these features on the ground differs from that shown on the Official Zoning Map, the features on the ground control.
 - 2. *Town Limits.* Where district boundaries are indicated as approximately following the Town limits, such Town limits shall be considered the district boundaries.
 - 3. *Property Lines.* Where the boundaries are indicated as approximately following property or other lot lines, such lines shall be construed to be the boundaries.
 - 4. *Watercourses.* Boundaries shown as following, or approximately following, the centerline of drainage ways, streams, creeks, water bodies including the reservoirs and lakes, or other watercourses shall be construed as following the channel centerline. In the event of a natural change in the location of such watercourses, the district boundary shall be construed as moving with the channel centerline.

5. *Railroads.* Boundaries indicated as following railroad lines run along a line midway between the tracks.
 6. *Unsubdivided Land or No Identifiable Feature.* On unsubdivided land, or where a district boundary does not follow an identifiable feature, the location of the boundary, unless the same is indicated by dimensions, shall be determined by applying, in order, the following rules:
 - a. *Legal Description.* The boundary shall be according to the legal description in the ordinance establishing the district boundaries.
 - b. *Text Dimensions.* The boundary shall be located by reference to dimensions shown in the text on the Official Zoning Map, if any.
 - c. *Map Scale.* The boundary shall be located using the map scale appearing on the Official Zoning Map.
 7. *Vacation or Abandonment.* Where a public street, alley, or parcel of land is officially vacated or abandoned, the regulations applicable to the abutting property apply equally to the vacated or abandoned street or alley.
- E. **Split Parcels.** Where a zoning district boundary divides a land parcel under a single ownership into two districts, the requirements of the less restrictive zone shall be applied to the entire parcel and the zoning district boundary adjusted accordingly, provided that the zoning district boundary adjustment is a distance of less than 100 feet, otherwise, an application for rezoning must be filed pursuant to the process set forth in this UDO. In the UDO, if the property owner prefers to have the full parcel in just one of the zoning districts.
- F. **Changes to Official Zoning Map.** Changes made to zoning district boundaries or other matters portrayed on the official zoning district map shall be made in accordance with the process set forth in this UDO. Changes shall be entered on the official zoning district map promptly after the amendment has been approved by the Town Council.
- G. **Conflicts Resolved.** In the event of a conflict between the district boundaries on the Official Zoning Map and the zoning of property provided by a duly enacted rezoning ordinance adopted before the effective date of this UDO, the Official Zoning Map shall control.

2.01.03 Zoning District Establishment

- A. **Generally.** The Town of Black Mountain is divided into zoning districts according to Table 2.01.03, Zoning Districts, which specifies each district along with the recommended land use category from the Elevate Black Mountain Comprehensive Plan. Pursuant to NCGS 160D, this UDO must be consistent with the map and plan. This section describes the relationship between the zoning districts and the land use map and categories described in the plan.
- B. **Jurisdiction.** For the purpose of this UDO and as established in [1.01](#), the zoning jurisdiction of the Town of Black Mountain shall include the land within the corporate limits of the Town.
- C. **Zoning Districts Established.** For the purpose of this ordinance, the Town of Black Mountain, North Carolina, is hereby divided into the following use districts:
1. *Base Districts.*
 - a. The districts set forth in the table below are those for uses permitted by right (P), those with supplemental standards known as limited uses (L), conditional uses approved as a zoning district by Town Council (C), or those subject to a quasi-judicial evidentiary hearing by special use permit (S). These base districts shall be established by Town Council and amended according to regulations set forth in X, X, and X.
 - b. Within each district is a series of by-right development options that provide for different types and forms of development suitable in various areas of the Town.

2. *Conditional Districts.* Conditional zoning districts are established to provide flexibility in the development of property while ensuring that proposed development is compatible with neighboring uses. Conditional districts allow for uses or development of land not otherwise permitted in the underlying base district. Conditionally zoned property may be subject to additional conditions, standards and regulations to ensure that the development and use of the property are compatible with the surrounding uses and consistent with the comprehensive plan and other plans adopted by the town. Conditional zoning should not be used to relieve hardships that could be resolved by issuance of a variance.
3. *Overlay Districts.* The Zoning Districts established may also include Overlay Districts as designated herein and shown on the Official Zoning Map. In such a case, the land is subject to the requirements of the underlying Zoning District and the additional provisions of the Overlay District. Additionally overlay districts are created to further regulate land use, dimensional requirements, and site design in significant or sensitive areas of town.

Table 2.01.03-1, Zoning Districts

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

Table 2.01.03-1, Zoning Districts

District Type	Future Land Use Category
Base Districts	
Specific Conditional Districts	
Cheshire TND-CZ	
Highland Farms OI-6-CZ	
Montreat College ICD-CZ	
The Settings TR-4-CZ	
Overlay Districts	
Historic Overlays (Historic District and Historic Conservation District)	
Fire District Overlay	
U.S. 70 Corridor Overlay	

2.01.04 Dimensional Standards

- A. **Purpose.** The purpose of these standards is to allow development, redevelopment, and substantial improvement of property consistent with the applicable district standards while protecting the value and enjoyment of adjacent properties. These regulations reduce the impacts of building height and mass on neighboring properties, promote privacy, preserve scenic views, and protect access to sunlight. Requirements are shown in Table 2.01.04-1.
- B. **Graphical Depiction.** Details for the standards below in graphic form in regards to how to interpret these measurements are located in [2.05, Measurements and Allowances](#).
- C. **Specific Allowances.** Allowances for projections into setbacks and increases in height of specific structures are located in [2.05, Measurements and Allowances](#).
- D. **Variances.** Yard and setback requirements shall be met unless variance is granted by the Board of Adjustment.
- E. **Setbacks.**
 1. *Corner and Double Frontage Lots.*
 - a. Yard and setback requirements shall be met unless variance is granted by the Board of Adjustment.
 - b. Minimum setbacks shall be measured horizontally from the origin of the setback as the right-of-way, or property boundary, to the nearest portion of the building or structure.
 - c. If the property line extends into a roadway or highway, then the setback line shall be measured from the edge of the roadway or back of the curb when computing setback requirements.
 - d. Wherever right-of-way has not been established, setback shall be measured from the outer edge of the existing drainage ditch running parallel and adjacent to the road, or four feet off the edge of pavement where no ditch exists, or from the edge of the traveled area on an unpaved road.
 - e. Public rights-of-way or easements for streets and roads shall not be considered a part of a lot or open space, or as front, side, or rear yard for the purpose of meeting yard requirements. Driveways, parking areas, loading zones, sidewalks, or greenways may encroach or be included within a yard setback without affecting the setback requirements.

- f. In developed areas where more than three structures already exist, the setback may be determined by the average setback on already built upon lots located wholly or in part within the same block and zoning district and fronting the same street. In such cases, the setback on such a lot may be less than the required setback but not less than the average of the existing setbacks on the developed lots. However, in no case shall setbacks be less than 15 feet, except in the CB, central business district, where the minimum setback is 12 feet.
 - g. No building or structure shall be placed within a roadway or highway right-of-way, except as otherwise provided in these regulations.
 - h. Any structure on a corner lot shall comply with the minimum setback (front yard) requirements of the street which it faces, and shall comply with 50 percent of the minimum front yard setback requirements, if applicable, on any other street which the corner lot abuts. In case of doubt as to which street a structure faces, or if a structure is built so as not to face any street, the zoning administrator shall determine which setback, side yard and rear yard requirements apply.
 - i. For lots having frontage on two or more streets, but not located on a corner, the minimum front yard shall be provided on each street in accordance with the applicable district(s).
2. *Steep Hillside Lots.*
- a. On residential lots where the first 45 feet from the edge of the pavement exceeds 30 percent slope, front yard setbacks are adjusted as follows:
 - i. In CR-1 and SR-2, minimum front setback requirement is 25 feet.
 - ii. In TR-4 and UR-8, minimum front setback requirement is 15 feet.
3. *Irregularly Shaped Lots.*
- a. Locations of front, side, and rear setback lines on irregularly shaped lots shall be determined by the Director in writing. Such determinations shall be based on the spirit and intent of the district regulations to achieve appropriate spacing and location of building(s) on individual lots. Appeals of such determinations shall be made to the Board of Adjustment.
 - b. In the event the lot is inwardly curved, such as in a cul de sac, the setback line shall be measured at the point on the lot where the lot meets the minimum width for the district.

F. Height.

- 1. *Maximum.* No structure shall be erected or altered so as to exceed the height regulations of the district in which it is located as shown in Table 2.01.04-1.
- 2. *How to Measure.* Height shall be measured as the average vertical distance from the highest adjacent grade at the base of a structure at the corners of the structure, or from the grade of the centerline of the nearest adjacent public roadway, whichever is higher, to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the mean height level between the eaves and ridge of a gable, hip, or gambrel roof.
- 3. *Buildings on a Slope.* Where buildings are located on slopes, the average height will be calculated for each side of the building at its corners and at no side of the building should the maximum height from the adjacent grade be more than ten feet greater than the allowable building height for the district.
- 4. *Communication and Radio Towers.*
 - a. Free-standing communications towers constructed pursuant to a special use permit are exempt from building height requirements of this section.
 - b. This section does not apply to amateur radio antennas affected and controlled by FCC regulations codified in Chapter 47, Section 97, of the Code of Federal Regulations

5. *Parapets.* Parapets may be used in all districts and shall not count toward the building height requirements, as long as they do not add more than ten percent of footage to the overall building height above the maximum height for the district. Parapets may be used to meet the screening requirement for rooftop mechanical equipment. For example:

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

G. Number of Structures on a Lot.

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

Table 2.01.04-1, Dimensional Standards

Zoning District	Use	Density and Lot Size			Minimum Yard Requirements			Maximum Height
		Minimum Lot Size, Maximum Density	Minimum Width (Feet)	Minimum Depth (Feet)	Front Setback (Feet)	Side Setback (Feet)	Rear Setback (Feet)	Structure Height (Feet)
CR-1	All Uses	1 acre, 1 DUA	80, 15 at street	100	30, 25 steep hillside	10	30**	35
SR-2	All Uses	1/2 acre, 2 DUA	60, 15 at street	100	30, 25 steep hillside	10	30	35
TR-4	All Uses	1/4 acre, 4 DUA	40, 15 at street	80	20, 15 steep hillside	10	15	35
UR-8	Major Subdivision	1/8 acre, 8 DUA	15	None	20, 15 steep hillside	10	15	35
	Other Residential	5,000 sq ft, No Max Density	15	None	20, 15 steep hillside	10	15	35
	Non-Residential	1/8 acre, No Max Density	40, 15 at street	None	20, 15 steep hillside	10	15	35

Table 2.01.04-1, Dimensional Standards

Zoning District	Use	Density and Lot Size			Minimum Yard Requirements			Maximum Height
		Minimum Lot Size, Maximum Density	Minimum Width (Feet)	Minimum Depth (Feet)	Front Setback (Feet)	Side Setback (Feet)	Rear Setback (Feet)	Structure Height (Feet)
OI-6	Residential	1/6 acre, 6 DUA	60	100	30	10	20	35
	Non-Residential	1/6 acre, No Max Density	100	100	40	30	30, 40 abutting residential district	35
NMU-8	Residential	1/8 acre, 8 DUA	50	100	25	10	10	35
	Non-Residential	1/8 acre, No Max Density	75	100	25	20	10, 20 abutting residential district	35
CBD	All Uses	None	None	None	12 from curb	None, comply with fire and building code	None, comply with fire and building code	40
HB-8	Residential	1/8 acre, 8 DUA	50	None	15	10	30	40
	Non-Residential	None	50	None	15	10, 20 abutting residential district	20, 30 abutting residential district	40
LI-8	Residential	1/8 acre, 8 DUA	50	None	15	10	30	55
	Non-Residential	None	None	None	0 on private street, 30 on public street, 50 across from residential street	10, 20 abutting residential district	20, 30 abutting residential district	55

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

§ 2.02 Zoning Districts and Standards

2.02.01 Districts

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

Table 2.02.01-1, Zoning Districts	
District	Purpose and Intent
Base Districts	
Conservation Residential District (CR-1)	The conservation residential district is established to protect areas in which the principal use of the land is residential or agricultural and where steep slopes or other environmental features make it more suitable for large lot development, conservation development and the preservation of open space.
Suburban Residential District (SR-2)	The suburban residential district is established to protect areas in which the principal use of the land is single-family residential and where less dense development is preferred for the protection of slopes or environmentally sensitive areas, traditional single-family neighborhoods and the preservation of open space.
Town Residential District (TR-4)	The town residential district is established to allow for a variety of housing types while maintaining an overall residential character with medium density. Any use which, because of its characteristics would interfere with the residential nature of the area is excluded.
Urban Residential District (UR-8)	The mixed residential district is established to provide a variety of housing types, promote density in the more urbanized and developable areas or town, and structure the orderly development of residential neighborhoods.

Table 2.02.01-1, Zoning Districts

District	Purpose and Intent
Base Districts	
Office and Institutional District (OI-6)	The office and institutional district is established to provide transition between residential and commercial districts; to accommodate a mixture of residential, office, and institutional uses in conditions of good health and safety; to accommodate planned developments that are institutional in nature and which may have multiple buildings and uses within one property; and to protect property values of residential, institutional and professional uses within the district in a way that is mutually beneficial.
Neighborhood Mixed Use District (NMU-8)	The neighborhood mixed use district is established to serve the needs of the surrounding residential neighborhoods by providing compatible goods and services without negatively impacting the residential nature of the adjacent neighborhoods. It is also intended to establish areas for low-intensity business centers which are accessible to pedestrians from the surrounding residential neighborhoods. Supplementary District Requirements: New construction within this district shall retain the characteristics of a residential neighborhood and shall not include metal buildings or cinder block buildings as the primary structure on a lot. Newly constructed structures, unless part of a special use permit or an accessory structure, shall have a pitched roof and other characteristics of single-family homes within the adjacent residential neighborhoods.
Central Business District (CB)	The central business district includes the area traditionally known as "downtown" and includes the "downtown historic district". This district is established to maintain the village-like community that preserves architectural heritage and small-town character of Black Mountain. It is intended to promote a safe, convenient, and attractive environment for pedestrians; promotes business in buildings of a size and scale appropriate to a small town; encourage locally-owned businesses, entrepreneurs, and artists; provide a wide range of shopping, dining, working, and cultural attractions with storefronts that interact with the sidewalk; promote the beautification of the public rights-of-way; and encourage residential development that blends with the commercial character of the district and enhances the variety of housing options provided in the town. Supplementary District Requirements: A. Primary entrances to buildings must connect to sidewalks. B. Existing sidewalks may be used for outdoor seating. Sidewalks may also be used for displays or temporary signs as permitted by Chapter 4 as long as four feet (4' or 48"), as measured from the back of the curb toward the building, is maintained as free and clear passage for pedestrians and wheelchairs. C. As part of new construction, sidewalks are required adjacent to state and town roadways and must be a minimum of six feet wide. Sidewalks intended for shared use with outdoor seating or retail displays must be a minimum of 12 feet wide.

Table 2.02.01-1, Zoning Districts

District	Purpose and Intent
Base Districts	
Highway Business District (HB-8)	The highway business district provides orderly growth along the town's major thoroughfares; promotes access management and traffic safety for all modes of transportation, encourages the redevelopment of existing commercial sites; creates economic opportunities ; promotes a safe, convenient and attractive environment for pedestrians to access good and services; creates gateways and entrances into the town along central corridors; and encourages residential development that blends with the commercial character of the district and enhances the variety of housing options provided in the town. Because of the objectives and characteristics of this district, it is located contiguous to major streets or within proximity to primary commercial districts. Supplementary District Requirements: A. Primary entrances to buildings must connect to sidewalks. B. As part of new construction, sidewalks are required adjacent to state and town roadways and must be a minimum of five feet wide with a minimum two-foot planted strip between the sidewalk and the roadway. C. For areas along U.S. 70, additional development requirements may apply. See Section 2.03.
Light Industrial District (LI-8)	The light industrial district includes areas in which the principal use of the land is for light manufacturing, materials processing, warehousing, and retail operations incidental thereto. The district promotes moderate-sized, clean industries which provide jobs and career opportunities within the community; permits uses that are conducted so that noise, odor, dust and glare of each operation is completely confined within an enclosed building, insofar as is practical; encourages entrepreneurship and small business development; allows limited residential uses which do not conflict with the ability of industrial enterprises to conduct their businesses within the district area; and allows community facilities and convenience trade establishments which provide needed services to industrial development. Supplementary District Requirements: A. Documentation of permits required. Applications for a zoning permit for industrial, fabrication or manufacturing uses must include documentation of applicable state and federal permits, including documentation of regulatory compliance for handling and storage of hazardous materials, use of ammonia or other chemicals for heating, cooling or other mechanical operations as appropriate, and the type and maximum amount of any hazardous materials that will be stored on site at any given time. B. Applications for zoning permits must include copies of NCDOT driveway permit applications for concurrence review. Traffic management and access shall be designed to maximize safety and to channel truck traffic onto major state roads with as little secondary or town road exposure as possible. A traffic impact analysis may be required in accordance with the town driveway permit requirements when accessing town roads. C. Operations on site, including free-standing mechanical equipment, chimneys, storage containers or tanks, water towers or chillers cannot cause excessive noise, vibration, smoke, odors, electrical or radio interference.

Table 2.02.01-1, Zoning Districts

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

2.02.02 Conditional Districts

- A. **Purpose.** Conditional zoning districts are established to provide flexibility in the development of property while ensuring that proposed development is compatible with neighboring uses. Conditional districts allow for uses or development of land not otherwise permitted in the underlying base district. Conditionally zoned property may be subject to additional conditions, standards and regulations to ensure that the development and use of the property are compatible with the surrounding uses and consistent with the comprehensive plan and other plans adopted by the town. Conditional zoning should not be used to relieve hardships that could be resolved by issuance of a variance.
- B. **Applicability.** All zoning requirements that apply to the general use district are also applicable to the corresponding conditional use district unless adopted conditions are more restrictive.
- C. **Specific Requirements.** The following shall also apply:
 1. *Phased Development.* A conditional district shall consist of land that will be planned and developed as a single development or as an approved series of development phases. The owner or owners of the property shall be legally capable of ensuring that development of the property will comply with all documents, plans, standards, and conditions approved by the town.
 2. *Uses Permitted.* Only those uses permitted in the underlying zoning district, whether by right or specially, shall be permitted in the conditional zoning district. Uses not otherwise permitted within the underlying zoning district shall not be permitted within the conditional district.

3. *Variances and Special Use Permits.* No variance or special use permit may be issued for developments on property subject to a conditional zoning ordinance.
- D. **Conditions.**
1. *Site-Specific Standards.* Site-specific standards and conditions may be imposed within a conditional district, provided such standards or conditions are approved by the Town Council and consented to by the petitioner in writing.
 2. *Persons Imposing Standards.* Standards and conditions may be proposed by the petitioner, by Town staff, by recommendation of the Planning Board, or by the Town Council.
 3. *Limits on Conditions.* Standards and conditions imposed shall be limited to those that address the conformance of the development and use of the site to Town ordinances and plans, or the impacts reasonably expected to be generated by the development or use of the site.
- E. **Consent.** With the applicant's written consent, the Town Council may agree to conditional zoning conditions that address additional fees, design requirements, and other development considerations.
- F. **Timing and Submittal of Application.** All applications for conditional district rezoning shall be submitted to the Planning Department by the owner or any other person having a recognized interest in the land for which the development is proposed or their authorized agent.
- G. **Content of Application.** Every application for conditional zoning shall include the following:
1. *Site Plan.* A proposed site plan, which shall include:
 - a. The name and address of the owner;
 - b. Total acreage of the subject parcel;
 - c. The proposed site layout, including street and lot arrangement; the general location, orientation and size of principal structures; designation of driveways, parking lots, open space, greenways, and stormwater management areas; the location, size and treatment of environmentally sensitive areas; and any existing or proposed easements, utility lines, water lines, or sewer lines.
 - d. Proposed total density and a summary of the total land area devoted to each type of general use of land;
 - e. A full list of the proposed uses consistent in character with the underlying zoning district, whether permitted by right or conditionally;
 - f. A proposed development schedule if the development is to proceed in phases; and
 - g. Identification of any required variation from existing regulations of the underlying base zoning district.
 2. *List of Proposed Conditions.* A list of proposed conditions shall accompany the application.
 3. *Application Fee.* Application fees shall be established by the Town Council and the required fee must accompany the application. Application fees are nonrefundable except where the application is withdrawn prior to consideration by the Planning Board.
- H. **Technical Review.** Every application for conditional district zoning shall conform to the technical review requirements set out in Section X in this UDO.
- I. **Planning Board Review.** Following the required technical review, the application shall be placed on the agenda for consideration at the next regularly scheduled Planning Board meeting.
- J. **Planning Board Recommendation.** The Planning Board shall submit a recommendation to the Town Council with a statement describing the following:
1. Whether the proposed conditional district is consistent with the comprehensive plan and other officially adopted plans, as applicable;

2. The uses to be permitted in the district;
 3. Any required variation from the regulations of the underlying base zoning district, if any;
 4. Recommended conditions, if any.
- K. **Public Hearing.** Following consideration by the Planning Board, the application shall be forwarded to the Town Council for public hearing.
- L. **Notice of Hearing.** Public notice of the public hearing shall be posted, advertised, and mailed as follows:
1. *Posting Requirements.* Staff shall prominently post a notice of the public hearing on the site of the proposed rezoning or on an adjacent street or highway right-of-way within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required but the town shall post enough notices in strategically visible locations so as to provide reasonable notice to interested persons.
 2. *Newspaper Notification.* Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of the hearing.
 3. *Mail Notification.* Staff shall mail a notice of the hearing to all property owners within 200 feet of the subject property by first class mail at the last address listed for such owners on the county tax records. The notice must be deposited in the mail at least ten but not more than 25 days prior to the date scheduled for the hearing. If this requirement would result in notices being sent to more than 50 different property owners, in lieu of mailed notice, the staff may publish a notice of the hearing as an advertisement in a newspaper of general circulation within the Town of Black Mountain, provided that such advertisement shall not be less than one-half of a newspaper page in size and all property owners residing outside the newspaper circulation area must still be notified by mail.
- M. **Approval.** The Town Council may approve or deny the application or may approve the application with reasonable and appropriate conditions attached. Any conditions to be attached must be consented to by the owner of the property in writing. The Council shall adopt a brief statement describing whether its action to either approve or deny the proposed rezoning is consistent or inconsistent with the comprehensive plan or any other adopted plan. A certified copy of the ordinance bearing the signature of the property owner to evidence the property owner's consent shall be recorded in the records of the Buncombe County Register of Deeds within 30 days of approval.
- N. **Effect of Approval.** Following approval, the applicant may proceed with the development pursuant to the approved site plan. If the proposed development involves the subdivision of land, approval of the master plan and conditional zoning designation shall serve as preliminary plat approval for the purposes of this code.
- O. **Final Approval.** Approval of final plats conforming to the approved master plan shall be approved by the planning director without the need for additional review ordinarily required for subdivisions or special use permits.
- P. **Substantial Changes.** Any substantial changes to an approved plan shall be reviewed by the Planning Board and approved or denied by the Town Council as a text amendment to the zoning ordinance. The following changes are considered substantial for purposes of this section:
1. The addition or removal of land from the zone;
 2. The addition or relocation of a building or structure;
 3. Addition or relocation of streets, roads, or driveways not contemplated in the original plan;

4. Modification of special performance criteria, design standards, or other conditions or requirements specified by the enacting ordinance;
 5. A change in land use or development type beyond that permitted in the enacting ordinance;
 6. An increase in the total number of residential dwelling units; or
 7. An increase of more than ten percent in total floor area of any nonresidential structures.
- Q. **All Other Changes.** The Planning Director shall have authority to review and either approve or deny any other proposed changes to the approved plan of development. Appeals from the decision of the Planning Director to approve or deny a proposed change shall proceed according to Section 8.01.10 of this Code.

§ 2.03 Special Purpose and Overlay Districts

2.03.01 Highway Overlays

- A. **Purpose.** Highway overlays are established to recognize specific corridors as unique areas that promotes a mix of uses including commercial, retail, and office, along the corridor.
- B. **Intent.** These corridors are the primary entrances, or "gateways," and thoroughfares through town. These overlays preserve and encourage the beautification of the corridors to promote economic development and investment along the corridors; promote automobile, bicycle, and pedestrian safety along the corridors; implement selected recommendations from corridor studies; promote inter-modal transportation and support transit; and maintain the small-town feel and traditional character of the town.
- C. **Establishment.** These overlays are established over properties and uses at least 200' from the center of road but not less than one parcel deep to the corridors through the jurisdiction of Black Mountain, with the exception of the central business district and the industrial districts (HI-0 and LI-8). Unless explicitly stated otherwise within the regulations of the overlay, all other regulations of the underlying zoning district shall apply..
- D. **Applicable Corridors.** The following Highway overlays are hereby established and called "corridor" within these standards:
1. *US 70.* This is established from Swannnoa River at Kearfott to Exit 65.
 2. *NC 9.* This is established from Blue Ridge Road to the corporate limits.
 3. *E. State Street.* This is established from US 70 to NC 9 along Blue Ridge Road.
- E. **Overlay Standards.**
1. *Non-Residential Building Setbacks.* Buildings adjoining the overlay rights-of-way shall be no more than 50 feet from the curb and gutter of the corridor as a maximum setback unless part of a special use permit.
 2. *Building Orientation.* Buildings adjoining the overlay rights-of-way shall be designed so that the building is oriented to the roadway. Buildings must have a minimum of one primary entrance opening directly toward the street and connect to the public sidewalk either directly or by a walkway or other facility such as a patio or stairs and ramp that accommodates pedestrians and wheelchairs.
 3. *Facade Standards.*
 - a. Doors, glazed openings or windows, and porches are considered openings on the facade of a building. All ground level exterior walls directly facing the corridor, intersections, and/or other public streets shall have a minimum of 50% openings the length of the wall.
 - b. Buildings shall avoid long, monotonous, uninterrupted walls or roof planes longer than 100 feet on their facades that are visible from the corridor. Building wall offsets, such as changes in materials,

use of projections or awnings, recesses, and changes in floor level, shall be used in order to add architectural interest and variety and relieve the visual effect of a single, long wall.

- c. Changes to the roofline (such as a staggered parapet or other articulation on the roofline facing the street) shall be provided every 100 feet to meet this requirement and to lend architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof. Structural signage of similar material to the building and attached to the building may be used to meet this requirement.
4. *Parking.*
- a. Unless as part of a special use permit, parking areas shall be in the side or rear of the primary structure on the lot to the greatest extent practicable. The exemption to this requirement is handicapped parking spaces or parking areas providing less than 20 spaces which may be located in the front.
 - b. When parking lots abut the sidewalk adjacent to a corridor, a planted buffer area of a maximum of six-feet-wide, and a minimum of three-feet-wide is required to separate the sidewalk from the parking lot. The buffer shall contain continuous landscaping of shrubbery and/or flower beds, or plantings. Where a parking lot abuts the sidewalk along the corridor for a length of more than 200 linear feet, then a break in the landscaping and a pedestrian connection to the parking area is required.
 - c. Town parking requirements may be decreased according to one or more of the following criteria within the overlay district:
 - i. Two to four parking spaces may be waived in exchange for the preservation of one established tree of 24 inches diameter or greater within a parking lot, up to 20 spaces in exchange for established trees per acre. The "Tree Protection Zone" is a minimum area equal to the area of a circle having a radius in feet equal to the tree diameter in inches (24-inch diameter of tree would require a 24-foot radius area). A tree protection zone must be incorporated into the site plan and preserved throughout construction. This area may serve more than one tree as long as the protection zone is adequately designated and maintained. These protected areas for larger trees can count toward the landscaping and parking lot island requirement of the town.
 - ii. A developer may choose the option of replacing one automobile space with four bicycle parking spaces, (or two spaces for eight bicycle parking spots, or three for 12) up to a maximum of 16 bicycle parking spaces in place of four automobile spaces.
 - iii. A developer may share parking through a joint-use agreement with another business or entity or group of businesses/entities. The number of spaces required for that business shall be determined by zoning administrator based on a negotiated joint-use agreement among businesses and the projected combined parking needs of the businesses involved.
5. *Landscaping.* All site plans shall design landscaping along the front of the building or parking lot adjacent to the right-of-way and in accordance with the town's landscaping regulations.
6. *Access Management and Property Ingress/Egress.*
- a. All sites shall be developed in accordance with "access management" principles. Access management is the implementation of design practices intended to address organized and controlled traffic movement to minimize traffic conflict, provide efficient traffic flow, and to provide a more pedestrian-friendly development pattern. Access management should address the location and design of public street and driveway connections to the primary roadway, as well as

promote site design that minimizes the total number of connections needed throughout the corridor.

- b. In order to minimize traffic conflicts at intersections, property ingress/egress shall be a minimum of 100 feet from intersections of a corridor and public roads. If the property frontage is situated in such a way or is not long enough to accommodate this requirement, then the driveway shall be as far from the intersection as possible.
 - c. Along corridors, parcels may have a maximum of one curbcut for two-way traffic or two curbcuts for one-way traffic onto the corridor. Curbcuts shall be a maximum of 25 feet for a two-way driveway, or 30 feet if driveway is to be used for truck traffic of more than two axles, or a maximum of 20 feet for one-way driveways.
 - d. One-way driveways shall be separated by a curbed median or planted area of minimum ten feet in width and include pavement markings with directional arrows to indicate traffic direction. Signage may be placed within this median as long as it does not interfere with the line of sight of motorists or the NCDOT right-of-way.
 - e. Adjacent properties with parking lots greater than 15 spaces shall be connected and share driveways and establish joint-access agreements. Joint parking can be utilized to meet minimum parking requirements of the town. Adjacent parking lots of greater than 15 spaces are required to have interior connections to allow traffic flow within parking areas.
 - f. Service entrances and alleys may be developed in addition to other driveways. Shared use and joint access to service entrances and alley ways is encouraged among multiple businesses and developments. Such alleys shall be located in the rear of buildings and should connect to side roads wherever possible.
 - g. Where possible, driveways on corner lots should utilize side streets to funnel traffic toward three and four-way intersections that may be governed by stoplights.
7. *Sidewalks and Pedestrian Markings.*
- a. Sidewalks are required along the corridor the length of property frontage and must be a minimum of five feet in width with a minimum two-foot buffer between the sidewalk and the back of curb.
 - b. All curb-cuts and driveways shall include pedestrian markings of zebra stripes, textured asphalt stamping, or brick pavers or other material that visually designate the pedestrian thoroughfare and connects to the sidewalk.
8. *Loading, Storage, and Screening.*
- a. All loading and storage areas shall be located to the side and/or rear of all principal structures, except single-family or duplex residential structures, fronting the highway corridor. For corner lots, the side of the lot facing the more major thoroughfare shall be considered the front yard for the purpose of this requirement.
 - b. All dumpsters shall be screened from any adjacent roadways and shall be located in the side or rear of buildings and comply with screening requirements of this ordinance.
 - c. Mechanical equipment, utility meters, storage areas, trash enclosures, transformers, generators or other utility hardware attached to or on the building or ground shall be screened from the corridor with materials similar to the structure, or be located so as not to be visible from public view from the corridor.
9. *Signage.* All free-standing signage as allowed in the town's sign regulations, must be of monument style and incorporate some non-metal materials such as wood, brick or stone into the structure. Such signs

may be lit through the use of external or internal sources only in accordance with the Town lighting regulations and shall not exceed 12 feet in height.

2.03.02 Historic Overlay

- A. **Purpose and Intent.** The historical heritage of our town is one of our most valued and important assets. The preservation of historic districts and landmarks stabilize and increase property values in their areas and strengthen the overall economy of the town. The purpose of establishing local historic districts and landmarks is to encourage the restoration, preservation, and rehabilitation of historically, architecturally, and archaeologically significant areas, structures, buildings, sites, objects and their surroundings, and to review new construction design to ensure compatibility with the character of the district and to safeguard against any potentially adverse influences which may cause the decline, decay, or total destruction of these important assets. In addition, the preservation of the historic districts and landmarks provides for the education, pleasure and enrichment of the residents of Black Mountain and the state as a whole.
- B. **Designation of Historic Districts.** All locally designated Historic Districts and Historic Landmarks shall be a part of the Historic Overlay District. The town council may adopt, amend, reject or repeal ordinances designating historic districts when adoption or amendment is pursuant to the following procedure:
1. An investigation and report describing the historical, architectural, or archaeological significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and the description of the boundaries of such district has been prepared; and
 2. The North Carolina Department of Cultural Resources, acting through the state historic preservation officer or his or her designee, shall make an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the town council within 30 calendar days after a written request for such analysis has been received by the department of cultural resources shall relieve the town of any responsibility for awaiting such analysis, and the town council may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.
 3. Historic districts shall consist of areas, which are deemed to be of special significance in terms of their history, prehistory, architecture and/or culture, and to possess integrity of design, setting, materials, feeling, and association. The area, buildings, structures, sites, or objects shall be significant elements of cultural, social, economic, political, or architectural history of the town or of the archaeological history or prehistory of the town. The preservation of such a district will provide for the education, pleasure and enhancement of the quality of life of all residents of the town.
 4. The town council shall designate the boundaries of an historic district in accordance with the procedures set forth in the Town Code of Ordinances, amendments of the Black Mountain Zoning Ordinance and N.C.G.S. §§ 160D-601 and 160D-944.
 5. Following the town council designation and approval an historic district, the area so designated shall be labeled "HD" on the official zoning map.
- C. **Certificates of Appropriateness.**
1. *When Required.* No exterior portion of any building or structure in the historic district (including masonry, walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the historic preservation commission. Such a certificate is required to be issued by the commission prior to the issuance of a building permit or other permit granted for the purpose of constructing, altering, moving or demolishing structures, which

certificate may be issued subject to reasonable conditions necessary to carry out the purpose and intent for which this district is established. A certificate of appropriateness shall be required whether or not a building or other permit is required.

2. *Application and Consideration.* For purposes of the application for and issuance of a certificate of appropriateness, "exterior features" shall include the architectural style, general design and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. Exterior features may also include historic signs, color and significant landscape, archaeological and natural features of the area. In the case of outdoor advertising signs, exterior features shall be construed to mean the style, material, size and location of all such signs.
3. *Interior Spaces.* Jurisdiction of the commission over interior spaces is limited to specific interior features of architectural, artistic, or historical significance in publicly owned landmarks and of privately owned historic landmarks for which consent for interior review has been given by the owner.
4. *Applicable to Government Entities.* The State of North Carolina (including its agencies, political subdivisions and instrumentalities), the Town of Black Mountain and all public utility companies shall be required to obtain a certificate of appropriateness prior to initiating any changes in the character of street paving, sidewalks, utility installations, lighting, walls, fences, structures and buildings on property, easements or streets owned or franchised by the State of North Carolina, the Town of Black Mountain or public utility companies or for construction, alteration, moving or demolition within the historic district; provided, however, that no certificate of appropriateness shall be required for ordinary maintenance or repair, including the following:
 - a. Underground utilities, except where archaeological finds or sites are uncovered;
 - b. Extension or upgrading of service to customers for equipment such as meters, valves and cleanouts;
 - c. Changes in type or amount of mechanical equipment such as interfaces, transformers or traffic-control devices on existing overhead lines, poles or ground-mounted installations;
 - d. Deletion or replacement of poles of standard material and height, not to exceed 37 feet;
 - e. Addition or deletion of fire hydrants;
 - f. Routine replacement of street signs;
 - g. Any upgrading of facilities to comply with National Electrical Safety Code (NESC) requirements;
 - h. Addition of equipment on existing lines or poles;
 - i. Replacement of existing overhead lines, poles or ground-mounted installation.

D. Land Use, Interior Arrangement, Maintenance, Emergency Repairs Not Considered.

1. Regulations governing the historic district overlay shall not be construed to prevent a property owner from making any lawful use of his or her property.
2. The ordinary maintenance or repair of any exterior architectural feature of a landmark, or in the historic district (HD) which does not involve a change in design, material, or outer appearance thereof, shall not be prevented by the requirements pertaining to the designated landmark or historic district.
3. Nothing in this article shall be construed to prevent (a) the maintenance or (b) in the event of an emergency, the immediate restoration of any existing above-ground utility structure without approval by the commission or the ordinary repair of streets, sidewalks, pavement markings, street signs, or traffic signs.
4. The construction, reconstruction, alteration, restoration, moving or demolition of any exterior architectural features, which the town building inspector or similar official shall certify is required for

public safety because of an unsafe or dangerous condition, shall not be prevented by the requirements pertaining to the landmark, or the historic district.

§ 2.04 Land Use Standards (Administrative and Special)

2.04.01 Purpose and Applicability

- A. **Purpose.** The purpose of this Section is to promote compatibility among land uses in the Town by establishing specific standards for the establishment of permitted, limited, special, accessory, and temporary uses.
- B. **Applicability.**
1. *Approval of Uses Permitted.* For uses permitted (P), they are by right within the applicable standards of this UDO.
 2. *Approval of Uses Permitted with Limitations.* For uses permitted with limitations (L), the Planning Director or designee shall use the standards set out in Section 2.04.05, Limited Use Standards, to determine whether to approve or disapprove.
 3. *Approval of Conditional Zoning.* Any conditional zoning with the Town of Black Mountain shall follow the standards in Section 2.04.06, *Conditional Zoning*.
 4. *Approval of Special Uses.* For special uses (S), the Board of Adjustment shall use the criteria set out in Section 2.04.07, Special Use Permits, to determine whether to approve, approve with conditions, or disapprove.
 5. *Approval of Accessory and/or Temporary Uses and/or Structures.* For accessory or temporary uses or structures, the applicable standards in each section shall apply.
 6. *Other Applicable Standards.* The standards of this Section are applied in addition to the other applicable standards of this UDO.

2.04.03 New and Unlisted Uses

- A. **Director Discretion.** Each of the use categories and specific uses listed in the tables in 2.04.04, *Land Use Matrix* are defined in 11.02.01, *Definitions*.
- B. **Unlisted Uses.** When a proposed use is not specifically listed in 2.04.04, *Land Use Matrix*, the Director shall determine if the use is the same as, or manifestly similar to, a listed use in form and function. If the proposed use is determined to be the same as, or manifestly similar to, a listed use, he shall classify the proposed use as the listed use. If the Director finds that a proposed use is not the same as, or is not manifestly similar to, a listed use, he shall classify the proposed use as not permitted, in each case, the zoning enforcement officer shall maintain a written record of such interpretations.
- C. **Decision Criteria.** The Planning Director or the Planning Board, as appropriate, shall evaluate the proposed use based on the following criteria:
1. *Parking demand;*
 2. *Average daily and peak hour trip generation (cars and trucks);*
 3. *Impervious surface;*
 4. *Regulated air or water emissions;*
 5. *Noise;*
 6. *Lighting;*
 7. *Dust;*

8. *Odors;*
 9. *Solid waste generation;*
 10. *Potentially hazardous conditions, such as projectiles leaving the site;*
 11. *Use and storage of hazardous materials;*
 12. *Character of buildings and structures;*
 13. *Nature and impacts of operation; and*
 14. *Hours of operation.*
- D. **If Not Authorized Then Prohibited.** If the Planning Director determines that a proposed use is not part of a defined use category or functionally similar to a listed specific use, then the use is a prohibited use.

2.04.04 Land Use Matrix

- A. **Principal Uses.** In interpreting what is a principal use, the principal use shall be considered as the primary purpose or function that a lot or structure serves or is proposed to serve. Two or more principal uses may be permitted to occupy the same land or building as long as each use is a permitted use.
- B. **Accessory Uses.** An accessory use shall be considered a use that meets the criteria set forth in 2.04.08, Accessory Use and Structure Standards.
- C. **Permitted Uses.** Table X-1, Permitted Uses by Zoning District, lists the land uses permitted in the various zoning districts.
1. **Symbols.** Table X-2 uses the following symbols:
 - a. "P" means that the land use is Permitted by Right subject to the standards that apply to all Permitted Uses.
 - b. "L" means that the land use is Permitted with Limitations in the same manner as a Permitted Use subject to Section X, Limited Use Standards.
 - c. "S" means that the use is allowed as a Special Use, which may be approved following an evidentiary hearing by the Board of Adjustment.
 - d. "--" means that the use is a Prohibited Use in the specified zoning district.
 2. **Unlisted Use Categories and Uses.** A use category or specific use is prohibited if it is not listed in Table X-1 and if the Director cannot interpret an unlisted specific use as functionally similar to a use that is allowed, based on the criteria in Section X, New and Unlisted Uses.

Use Category	Specific Use	CR-1	SR-2	TR-4	UR-8	NMU-8	OI-6	CBD	HB-8	LI-8	HI-0
Agricultural and Residential											
	Auction Sales – Livestock Only									P	P
	Beekeeping/Apiaries	L	L	L	L	L	L		L	L	L
	Urban Chickens	L	L	L	L	L	L	L	L	L	L

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

	Shared Housing/Community Living Facilities				P	P	P		P	P	P
	Cottage Housing Development	S	S	S	S	S	S		S		
	Planned Unit Development - Residential	S	S	S	S	S	S		S	S	
	Accessory Structures	P	P	P	P	P	P	P	P	P	P
	Home Occupations	L	L	L	L	L	L	L	L	L	L
Group Living	Family Care Home	L	L	L	L	L	L	L	L	L	
	Residential Care Facility	L	L	L	L	L	L	L	L	L	
	Congregate Care Facility						S				
	All Other Group Living Uses	L	L	L	L	L	L	L	L	L	
Institutional and Civic											
Community Amenities	Swimming Pool	P	P	P	P	P	P	P	P		
	Library	P	P	P	P	P	P	P	P		
	Ball Fields/Soccer Fields	P	P	P	P	P	P	P	P		
	All Community Amenities	P	P	P	P	P	P	P	P		
Day Care	All Day Care Uses				L	L	L	L	L		
Educational Facilities	School, Public or Private, Elementary or Secondary						P		P	P	P
	University or College						P		P	P	P
	All Other Educational Facilities						P		P	P	P
Government Facilities	Correctional Institution										L
	All Other Government Facilities	P	P	P	P	P	P	P	P	P	P
Medical Facilities	Medical and Dental Office					P	P	P	P	P	P
	Hospital								P	P	P

	Nursing Care Institution						S				
	All Other Healthcare Facilities					P	P	P	P	P	P
Parks and Open Areas	Cemeteries & Mausoleums						P		P	P	P
	Parks and Open Space Areas	P	P	P	P	P	P	P	P	P	P
	Recreation Services, Indoor					P	P		P	P	P
	Recreation Services, Outdoor	L	L	L	L	L	L	L	L	L	L
	Country Club and Golf Course						P		P		
	Zoo						L		L	L	L
	All Other Parks and Open Areas	P	P	P	P	P	P	P	P	P	P
Passenger Terminals	Airport									L	L
	Park-and-Ride Facility/Transit Terminals						P	P	P	P	P
	Taxi and Transportation Services					P	P	P	P	P	P
	All Other Passenger Terminals					P	P	P	P	P	P
Public Assembly	Club, Private					P	P	P	P	P	P
	Convention Center/Visitors Bureau							P	P	P	P
	Conference Center							P	P	P	P
	Meeting Halls for Civic, Social, and Fraternal Uses	P	P	P	P	P	P	P	P	P	P
	Places of Worship	P	P	P	P	P	P	P	P	P	P
	Cultural & Community Facilities							P	P	P	P
	All Other Public/Religious Assembly Uses							P	P	P	P

Utilities	Solar Farm	L								L	L
	Amateur Radio Antenna	S	S	S	S	S	S	S	S	S	S
	Wireless Telecommunications Tower								S	S	S
	Public Utilities	P	P	P	P	P	P	P	P	P	P
Commercial											
Entertainment, Indoor	Amusement Arcade								P	P	P
	Brewery/Distillery/Winery/Cidery						P	P	P	P	P
	Microbrewery/Microdistillery/Microwinery/Microcidery						P	P	P	P	P
	Dance Halls, Night Clubs, Private Clubs, Bars, Lounges, Taverns, Pubs						P	P	P	P	P
	Fortune Telling/Palm Reading							P	P	P	P
	Reception Facility	P					P	P	P	P	P
	Tattoo Parlor, Body Piercing								L	L	L
	All Other Indoor Entertainment, excluding Sexually Oriented Businesses							P	P	P	P
Entertainment, Outdoor	Amusement Park								P	P	P
	Drive-In Theater							L		P	P
	All Other Outdoor Entertainment							P	P	P	P
Offices	Contractors Office (without outdoor storage)									P	P
	Contractors Office (with outdoor storage)										P

	Financial Institutions							P	P	P	P
	Accounting					P	P	P	P	P	P
	Insurance					P	P	P	P	P	P
	Engineering Services					P	P	P	P	P	P
	Counselors and Therapists					P	P	P	P	P	P
	Healthcare Providers					P	P	P	P	P	P
	Property Management					P	P	P	P	P	P
	Architect					P	P	P	P	P	P
	Lawyer					P	P	P	P	P	P
	All Other Office Uses					P	P	P	P	P	P
Overnight Accommodations	Bed and Breakfast Home	P	P	P	P	P	P	P	P		
	Bed and Breakfast Inn	P	P	P	P	P	P	P	P		
	Boarding House	L	L	L	L	L	L	L			
	Hotel							P	P	P	P
	Motel							P	P	P	P
	Short-Term Rental	L	L	L	L	L	L	L	L		
	Summer Camp	P	P	P	P		P				
	Campground						S		S	S	S
	Recreational Vehicle Park						S		S	S	S
	All Other Overnight Accommodations							P	P	P	P
Parking, Commercial	Truck, Tractor Trailer, or Bus Storage (does not include inoperable vehicles)										P
	Automobile Parking										P

	All Other Commercial Parking Uses (does not include inoperable vehicles)										P
Retail, Repair, Sales, and Service Uses	Firearms and Ammunition Sales								P	P	P
	Funeral Home (without crematorium)								P	P	P
	Funeral Home (with crematorium)								P	P	P
	Lawn and Garden Supply (without outdoor display or storage)							P	P	P	P
	Lawn and Garden Supply (with outdoor storage display or storage)								P	P	P
	Liquor Sales (ABC Store)								P	P	P
	Outdoor Market					P	P	P	P	P	P
	Flea Market								P	P	P
	Pawn Shop								P	P	P
	Vaping and Tobacco Shop								L	L	L
	Art Studio and Galleries				P	P	P	P	P	P	P
	Convenience Store					P		P	P	P	P
	Health and Fitness Facilities					P	P	P	P	P	P
	Heritage Crafts				L			P	P	P	P
	Instruction Services and Studios								P	P	P
	Laundromat					P	P		P	P	P
	Laundry and Dry Cleaning							P	P	P	P
	Farm Supply Store								P	P	P

	Retail							P	P	P	P
	Retail (up to 2,500 sf)						P		P	P	P
	Grocery Store								P	P	P
	Neighborhood Market					P	P		P	P	P
	Corner Store					P	P		P	P	P
	Bookstore							P	P	P	P
	Fitness Studio and Gym							P	P	P	P
	Moving Van Rental								P	P	P
	Mixed-Use Residential/Non-Residential					P	P	P	P	P	P
	Mixed-Use Non-Residential						P	P	P	P	P
	Drug Store							P	P	P	P
	Hair Salon/Barber Shop							P	P	P	P
	Beauty Parlor/Nail Salon							P	P	P	P
	Printing							P	P	P	P
	Building Material Sales								P	P	P
	Mobile Retail					P	P	P	P	P	P
	Florist					P	P	P	P	P	P
	CBD Dispensary							P	P	P	P
	Planned Unit Development – Commercial					S	S	S	S	S	S
	All Other Retail Sales and Service							P	P	P	P
	Restaurant (with drive-thru)								P	P	P
	Restaurant (without drive-thru)	P						P	P	P	P

	Bakery							P	P	P	P
	Café and Coffeeshop							P	P	P	P
	Ice Cream Parlor							P	P	P	P
	Mobile Food Vendor							L	L	L	L
	Mobile Food Vendor Court							L	L	L	L
	All Other Restaurant Uses								P	P	P
Sexually Oriented Business	All Sexually Oriented Businesses								S		S
Vehicle Sales and Service Uses	Automobile Repair, Major								P	P	P
	Automobile Repair, Minor							P	P	P	P
	Automobile Towing and Temporary Storage									P	P
	Car Wash								P	P	P
	Fuel Sales							P	P	P	P
	Manufactured/Modular Home and Storage Building Sales								P	P	P
	Neighborhood Fueling Facility					L	L				
	Truck Stop, Travel Plaza									P	P
	Vehicle Sales and Rental								P	P	P
	Heavy Equipment Sales, Rental and Service								P	P	P
	All Other Vehicle Sales and Service Uses								P	P	P
Industrial											
Heavy Industrial	Animal Processing									P	P

	Asphalt and Concrete Mixing Plants										P
	Fertilizer Manufacturing										P
	Chemical Treatment									P	P
	Freight Handling Facilities									P	P
	Distribution									P	P
	Industrial Park Development								S	S	S
	All Other Heavy Industrial Uses									P	P
Light Industrial	Small Scale Manufacturing									P	P
	Micromanufacturing									P	P
	Scientific Research & Development Services								P	P	P
	Laboratories and Research Facilities								P	P	P
	Industrial Cleaning Service									P	P
	All Other Light Industrial Uses									P	P
Self-Service Storage	Mini-Storage									P	P
	Self-Storage								P	P	P
	All Other Self-Service Storage Uses								P	P	P
Warehousing and Storage	All Warehousing and Storage								P	P	P
Waste Related Service	Landfill										P
	Salvage Yard										S
	Junk Yard										S

	Recycling Sorting, Processing, or Storage									P	P
	Wood and Yard Waste Facility										P
	All Other Waste Related Service									P	P
Wholesale Trade	Building Material Supply (with outdoor storage)								P	P	P
	Farm Products, Sales, Bulk								P	P	P
	Farm Supply Product Sales (with outdoor storage)								P	P	P
	Florist and Nursery Supply (with outdoor storage)								P	P	P
	Lumber Yards										P
	All Other Wholesale Trade (without outdoor storage)								P	P	P

2.04.05 Limited Use Standards

- A. **Generally.** Certain uses are permitted within [2.04.04, Land Use Matrix](#), which require additional standards to operate and function as a compatible use within a certain zoning district. Those uses are shown with an "L" in the table. These provisions do not apply to uses listed with a "P", which are permitted by right, or an "S", which are designated Special Use Permits required as listed in [2.04.07](#).
- B. **Purpose.** The purpose of these standards is to ensure that a use generally deemed compatible with permitted uses in a given zoning district can be permitted with certain conditions placed on the use as denoted in this Section.
- C. **Applicability.** An application is required for the establishment of a new limited use, a change to a limited use, or the expansion of a limited use that has not been approved.
- D. **Specific Limited Uses.** In accordance with the references in [2.04.04, Land Use Matrix](#), the following provisions apply to the uses listed below:
1. *Beekeeping/Apiaries.* In accordance with the North Carolina Bee and Honey Act of 1977, the town permits up to five hives on a single parcel with the following restrictions:
 - a. Hives shall be defined as in G.S. 106-635(15).
 - b. The hive(s) are to be placed at ground level or securely attached to an anchor or stand. If the hive(s) are securely attached to an anchor or stand, the town may permit the anchor or stand to be permanently attached to a roof surface.
 - c. The location of any hive(s) on the property is permitted to be regulated by the Act and as such shall be placed as follows:
 - i. Hive(s) shall be setback no less than 50' from any property line.

- ii. Hive(s) shall be kept in rear yards only.
 - iii. If the owner no longer maintains the hive(s), removal is required to protect the health, safety, and welfare of the public.
 - d. In the event that a parcel is located in CR1, LI, or HI, bees may be kept as allowed under North Carolina law in an unlimited capacity as long as the operation and hive(s) are located at least 200 feet from any residential use or residential zoning district boundary, school, day care facility, or public park.
2. *Urban Hens and Fowl.*
- a. Urban hens and fowl may be kept on the premise of a detached single-family residence under the following conditions:
 - b. No more than six (6) urban hens or fowl shall be allowed for each single-family dwelling.
 - c. No urban hens or fowl shall be allowed in multifamily complexes, including duplexes.
 - d. No roosters (males) shall be allowed.
 - e. There shall be no outside slaughtering of urban hens or fowl.
 - f. Enclosures must be situated at least 15 feet from the neighboring residence.
 - g. Enclosures must provide at least four (4) square feet per urban hen or fowl.
 - h. Enclosures must be kept in a neat and sanitary condition at all times, and must be cleaned on a regular basis so as to prevent offensive odors. Neat and sanitary shall mean a permanent solid roof, walls constructed primarily of chicken wire type material excepting the load bearing and door members, immediate removal of dead animals, and the removal of refuse that may attract vermin.
 - i. Feed shall be stored in rodent proof containers.
 - j. Enclosures and pens must be located in rear yards.
3. *Agriculture.* These regulations may affect property for agricultural purposes only as provided for in this section. This section does not limit regulation under this part with respect to the use of a farm property for non-farm purposes.
- a. Agricultural purposes include the production and activities as defined in these regulations and by North Carolina State Statutes as "bona fide farms" and related or incidental to the production of crops, fruits, honey, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market, excluding hog products, whether or not the use is conducted on owned or leased property, and regardless if agricultural products are used for personal consumption or sale.
 - b. Animal livestock and poultry operations, including horses, sheep, cows, goats, or llamas, must comply with the Buncombe County Animal Control Ordinance and meet the following requirements:
 - i. Maintain enclosures (corrals, fencing, paddocks) in good condition so that animals stay on property;
 - ii. Protect perennial and intermittent streams from erosion and animal waste with stream exclusion systems, water delivery devices or other grazing management practices; and
 - iii. Locate compost and feed storage areas at least 30 feet from property boundaries abutting residential uses and from perennial streams.
 - c. Maintain a 30-foot setback from the property line of an abutting residential use, for any structure, such as barns or stables but not including fencing.

- d. Any lot used to maintain livestock shall be two acres or more. Livestock does not include fowl, such as urban hens.
 - e. Not more than one animal unit shall be kept, maintained or stabled per 5,445 square feet ($\frac{1}{8}$ acre). For the purposes, of this section, one animal unit shall mean a goat, sheep, horse, cow, llama, alpaca, ostrich, or similar animal. Six urban hens or similar poultry shall count as one animal unit.
 - f. The keeping of hogs is not permitted.
 - g. All livestock introduced onto a property where there is no pre-existing containment area (such as a fence, paddock, or enclosed pasture), except for urban hens or fowl, shall be fenced so that they are no closer than 150 feet from an adjacent living unit. This shall not apply to residences constructed after the establishment of such livestock containment area. However, the containment area may not encroach further towards the newly established residence.
 - h. This section shall not apply to cats, dogs, rabbits, or similar household pets.
 - i. In the CB, NMU-8, and UR-8 districts agricultural uses related to livestock and animal husbandry of any type, with the exemption of household pets or urban hens or fowl, are prohibited. Properties with allowable agricultural uses not related to animals, must comply to setbacks, driveway standards, and other guidelines that are applicable within those districts.
 - j. Structures for storage of farm or maintenance equipment and supplies, and similar items associated with agricultural uses are permitted subject to the accessory structure setbacks for their respective zoning districts and shall not cover more than 30 percent of the total lot area.
 - k. Any greenhouse in any district other than the industrial (HI-0, LI-8) or highway-business (HB-8) districts shall be treated as an accessory building and shall meet the towns' zoning guidelines, including setback and building requirements of the district in which it is located. Within the central business district a greenhouse may serve as an accessory structure and must be constructed of rigid materials. A greenhouse is only allowed as a primary structure in the HI-0, LI-8, or HB-8 districts and must comply with all other district requirements. All commercial greenhouses must receive a certificate of compliance and occupancy.
 - l. In all districts, regulations regarding flood hazard prevention, stormwater management, signage and lighting shall apply to all agricultural uses.
4. *Garden Markets.*
- a. Farm stands associated with garden markets shall be allowed as an accessory use in all districts.
 - b. Tailgate sales are permitted as long as they do inhibit traffic flow or safety, and with the permission of the property owner.
 - c. Off-premises produce stands shall be allowed as long as the use is for less than four continuous months per growing season.
 - d. All farm stands shall not be located closer than ten feet to any side lot line unless a greater setback is required for the zoning district in which it is located or as directed by the zoning administrator for the purpose of traffic safety.
 - e. Signs for a farm stand or tailgate sales shall not be illuminated, nor have flashing lights, nor shall they exceed four square feet in area. Off-premises signs are not permitted.
5. *Secondary Dwellings.* Secondary dwellings may be located in a building separate from the principal dwelling subject to the following requirements:
- a. Secondary dwellings shall meet the setbacks of the principal structure as set forth for the zoning district in which it is located.
 - b. Secondary dwellings shall be built to North Carolina Residential Building Code Standards.

- c. The secondary dwelling size shall not exceed 50 percent of the square footage of the livable area of the primary structure or 1,100 square feet, whichever is less.
 - d. No secondary dwelling will be sited between the principal building and an adjacent public roadway, not including a private alleyway or driveway.
 - e. Only one secondary dwelling unit shall be permitted per zoning lot.
 - f. If a manufactured home, the secondary dwelling shall not be pulled up to or attached to the primary residence, and must meet the requirements for manufactured housing in this ordinance.
 - g. Adequate off-street parking shall be provided at a ratio of two cars per dwelling unit on the same lot.
 - h. If there will be no public sanitary sewer service to the secondary dwelling, the county health department shall approve a septic system prior to construction.
 - i. Lots with duplexes shall not be allowed a secondary dwelling.
6. *Home Occupations.*
- a. Home occupations are permitted in all districts except in HI-0 where residential uses are considered a nonconforming use. However, within the HI-0 district, a home occupation may be integrated into a pre-existing residential structure in compliance with this chapter.
 - b. The home occupation must be clearly incidental to the residential use of the dwelling and must not change the essential residential character of the dwelling or the immediate neighborhood.
 - c. The intent of these regulations is to allow for home occupations throughout Black Mountain while minimizing the impact on neighbors and maintaining the same levels of noise, traffic, parking and other characteristics of the surrounding residential properties.
 - d. In no case shall any nonresidential use or home occupation consist of operations or conditions resulting in noise, odors, smoke, glare, dust, gases, excessive traffic, electrical or other radiation, or other characteristics of a type or to an extent which create a nuisance or hazard to adjacent or neighboring residential properties.
 - e. A home occupation may be conducted in an accessory structure.
 - f. No display of stock in trade which is sold on the premises shall be visible from outside the building. Catalog and internet products may be received and shipped from the premises to fulfill orders as long as goods, products or commodities are stored within the home or an accessory structure customarily found in a residential district.
 - g. There shall be no outdoor storage or visible evidence of equipment or materials used in the home occupation, unless the equipment or materials are of a type and quantity that could reasonably be associated with the principal residential use.
 - h. In residential districts, business identification or advertising signs are only permitted if they are attached to the primary or secondary structure and shall not exceed four square feet. All other signage must conform to the town sign and district regulations.
 - i. Off-street parking needed to accommodate the home occupation shall be provided onsite but shall not exceed four spaces.
 - j. Adult day care homes and child care homes shall provide care to no more than five unrelated persons and shall require an annual certificate of occupancy or safety inspection to ensure adequate structure and fire safety as well as documentation certifying compliance with all state and federal standards.
 - k. No one who resides outside of the residence may work in the home.

- l. Only vehicles used primarily as passenger vehicles will be permitted in connection with the conduct of the home occupation.
 - m. A home occupation housed within the dwelling shall occupy no more than 25 percent of the total floor area of the dwelling, not to exceed 500 square feet.
 - n. Home occupations shall complete a home occupation application that includes zoning verification.
7. *Family Care Home.* In accordance with G.S. chs. 122C, 131D, and 160D, family care homes are deemed residential uses for zoning purposes subject to the following additional requirements:
 - a. Each family care home shall be licensed by the North Carolina Department of Health and Human Services as required by State law.
 - b. No family care home may be located within a one-half-mile radius of any other residential care home.
 - c. No exterior signage is permitted.
 8. *Residential Care Facility.* The State of North Carolina provisions for this use shall be considered as part of the review request, as long as definitions are clear and meet general statutes. Check proximity rules and make sure it meets the state standards.
 9. *All Other Group Living Uses.* The State of North Carolina provisions for this use shall be considered as part of the review request.
 10. *All Day Care Uses.* These requirements apply only to child and adult day care services providing care for more than six clients at a time:
 - a. Each day care shall be licensed or certified by the North Carolina Department of Health and Human Services required by state law.
 - b. Child day care centers shall provide a fenced outdoor play area. The fence shall not be less than four feet in height.
 - c. Day care centers shall provide locations for pick-up/drop off areas which do not impede traffic on town or state roads.
 11. *Correctional Institution.* Correction institutions, including government owned or private, must meet the following:
 - a. All structures, outdoor exercise areas, or any other facilities associated with the use shall be setback a minimum of 500 feet from any adjacent property with an existing residential use or adjacent residentially zoned property.
 - b. Primary vehicular access to such use must be from a paved arterial or collector road.
 12. *Zoo.* Any zoo in the Town of Black Mountain shall meet requirements in accordance with AZA (Association of Zoos and Aquariums) standards. If a zoo loses AZA accreditation, the zoo shall close if accreditation is not regained within two years.
 13. *Airport.* Any airport in the Town of Black Mountain shall meet requirements in accordance with the Division of Aviation of NCDOT.
 14. *Solar Farm.* To provide a setting for high tech power generation through solar panels in a solar farm setting, the following regulations shall be met:
 - a. Financial Surety. Prior to the issuance of a Zoning Compliance Certificate, the applicant must provide the Town with a performance guarantee as provided below. The amount of the guarantee shall be 1.25 times the estimated decommission cost minus the salvageable value, or \$50,000, whichever is greater. Estimates for decommissioning the site and salvage value shall be determined

by a North Carolina licensed engineer or a licensed contractor. It is the responsibility of the applicant to provide the Town with the certified cost estimate.

- b. Types Permitted. The following types of performance guarantees are permitted:
 - i. Bond. A surety or performance bond that renews automatically, includes a minimum 6-day notice to the Town prior to cancellation, is approved by the Planning Director, and is from a company on the U.S. Department of Treasury's List of Certified Companies. A bond certificate must be submitted to the Town each year verifying the bond has been properly renewed.
 - ii. Certified Check. A certified check deposited with the Finance Director, as escrow agent, who will deposit the check in an interest bearing account of the Town, with all interest accruing to the applicant. Funds deposited with the Finance Director will be returned when the solar farm is decommissioned and any necessary site restoration is completed.
 - iii. Letter of Credit. A no-contest irrevocable bond letter of credit from a banking corporation licensed to do business in the State of North Carolina. The terms of the letter must include the absolute right of the Finance Director to withdraw funds from the bank upon certification by the Town Manager that the terms and conditions of the performance guarantee have been breached. The letter must be valid up to 12 months from the date the performance guarantee was approved.
- c. Time Effective. The full amount of the bond, certified check, or letter of credit must remain in full force and effect until the solar farm is decommissioned and any necessary site restoration is completed.
- d. Release from Financial Surety. The land owner or tenant must notify the Town when the site is abandoned for the financial surety instrument to be considered released and no longer held by the Town.
- e. Site Restoration. Each approved solar farm must have a decommission plan submitted by the applicant ensuring the following:
 - i. Plan Requirements. The applicant must include a detailed decommission plan that describe the anticipated life of the solar farm, the estimated decommissioning costs in current dollars, the method for ensuring that funds will be available for decommissioning and restoration, and the anticipated manner in which the solar farm project will be decommissioned and the site restored.
 - ii. Time Requirement. Following a continuous 6 month period in which no electricity is generated, the permit holder will have 6 months to complete decommissioning of the solar farm. Decommissioning includes removal of solar panels, buildings, cabling, electrical components, and any other associated facilities below grade as described in the approved decommissioning plan.
 - iii. Installed Improvements Maintenance Standards. Landscape buffer/screens, ground cover, security fences, gates, and warning signs must be maintained in good condition until the solar farm is decommissioned and removed from the site.
- f. Fire Safety. A "kill switch" sufficient to take each series of panels out of service and which is accessible by fire safety personnel at any time shall be installed and incorporated in the plans and fire safety personnel shall receive a briefing prior to activation.
- g. Fencing. A security fence equipped with a gate and a locking mechanism must be installed at a minimum height of 8 feet along all exterior sides of the solar farm.
- h. Underground lines. Power transmission lines must be located underground to the extent practical.

- i. Voltage Warning Signs. A warning sign concerning voltage must be placed at the main gate to include the name of the solar farm operator and local phone number for the solar farm operator in case of an emergency.
 - j. Authorization from local utility company. The applicant must provide written authorization from the local utility company's grid.
 - k. Erosion Control. Erosion control measures must be installed at construction entrances in order to minimize off-site soil damage. Existing grass must be maintained in perpetuity sufficient to prevent erosion.
 - l. Parking During Construction. All construction parking must be located outside of the right-of-way.
 - m. Permits Required. The applicant must secure all necessary approvals and/or permits from NCDOT for the access permits for project entrances prior to issuance of a Zoning Permit.
 - n. Glare. All solar panels must be constructed to minimize glare or reflection onto adjacent properties and adjacent roadways and must not interfere with traffic or create a safety hazard.
 - o. Buffering and Screening. A landscape buffer/screen along all exterior sides of the security fence must consist of:
 - i. On-site mature vegetation existing at a minimum height of 10 feet and depth of 75 feet between the security fence and adjacent property including rights-of-way; or
 - ii. A single row of evergreens in combination with mature vegetation installed at a height of 5 feet achieving opaqueness and a minimum height of 10 feet in 5 years; or
 - iii. A double row of off-set evergreens absent mature vegetation, installed at a height of 5 feet achieving opaqueness and a minimum height of 10 feet in 5 years; or
 - iv. A berm combined with evergreen vegetation installed at a height of 5 feet achieving opaqueness and a minimum height of 10 feet in 5 years.
 - p. Minimum Setbacks. All structures, except the security fencing, must meet a 50-foot front, rear, and side yard setback measured from the appropriate rights-of-way or property line.
15. *Tattoo and Body Piercing.*
- a. No tattoo parlor or body piercing studio shall be located within 500 feet, as measured in a straight line from property line to property line, of:
 - i. Any other tattoo parlor or body piercing studio,
 - ii. A church,
 - iii. A public or private elementary or secondary school, child day care or nursery school,
 - iv. A public park,
 - v. Residentially zoned or residentially used property, or
 - vi. Any establishment with an on-premises ABC license.
 - b. Ear piercing, as a principal or accessory use, shall not be subject to this classification and these provisions.
 - c. Tattoo and/or body piercing operations shall not be considered as customary home occupations.
16. *Boarding House.*
- a. There shall be only one kitchen, a common dining room or study area, and no dining facilities or kitchens in the lodger's rooms where meals may be prepared and served.
 - b. Boarding or rooming houses exclude hotels, motels, group homes, bed and breakfast homes and bed and breakfast inns.

17. *Short Term Rental.* WAITING ON THIS FOR NOW.
18. *Vaping and Tobacco Shop.*
 - a. No vaping or tobacco shop shall be located within 500 feet, as measured in a straight line from property line to property line, of:
 - i. Any other vaping or tobacco shop,
 - ii. A church,
 - iii. A public or private elementary or secondary school, child day care or nursery school,
 - iv. A public park,
 - v. Residentially zoned or residentially used property, or
 - vi. Any establishment with an on-premises ABC license.
 - b. Vaping and Tobacco shop operations shall not be considered as customary home occupations.
19. *Heritage Crafts.* Makers of heritage crafts shall be allowed as a business or home occupation as long as the use is not activity or materials involved are not prohibited in any way by the State of North Carolina for use within a residence or residential area.
20. *Food Trucks.* (Need to incorporate town requirements)
21. *Neighborhood Fueling Facility.* Neighborhood fueling facilities are provided to provide fueling services be it gas, electric, or other fuel, within mixed-use districts. These types of business operations must be compatible with a residential area in terms of design, lighting and hours of operation, and regulations of the district in which it is located and shall also comply with the following requirements:
 - a. Must cease operations between the hours of 11:00 p.m. and 7:00 a.m.
 - b. Must provide adequate two points of ingress/egress for vehicles, and adequate space for fueling.
 - c. Must be of a design and building material that is in character with the surrounding neighborhood.
 - d. Signage must be of a monument style and be less than ten feet tall.

2.04.06 Conditional Zoning Administration

- A. **Purpose.** In addition to the standards establishing conditional zoning in [2.02.02](#), the following shall govern the process.
- B. **Timing and Submittal of Application.** All applications for conditional zoning shall be submitted to the planning and development department by the owner or any other person having a recognized interest in the land for which the development is proposed or their authorized agent. Application forms are available through the town's website.
- C. **Content of Application.** Every application for conditional zoning shall include, at a minimum, the following:
 1. *Site Plan.* A proposed site plan, which shall include:
 - a. The name and address of the owner;
 - b. Total acreage of the subject parcel;
 - c. The proposed site layout, including street and lot arrangement; the general location, orientation and size of principal structures; designation of driveways, parking lots, open space, greenways, and stormwater management areas; the location, size and treatment of environmentally sensitive areas; and any existing or proposed easements, utility lines, water lines, or sewer lines.
 2. *Density and Summary.* Proposed total density and a summary of the total land area devoted to each type of general use of land;

3. *Uses.* A full list of the proposed uses consistent in character with the underlying zoning district, whether permitted by right or conditionally;
 4. *Development Schedule.* A proposed development schedule if the development is to proceed in phases;
 5. *Variation from Base Zoning.* Identification of any required variation from existing regulations of the underlying base zoning district;
 6. *List of Conditions.* A list of proposed conditions, if any;
 7. *Names.* The names of all property owners and existing land uses within 200 feet of the boundary of the subject property.
- D. **Application Fee.** Application fees shall be established by the Town Council and the required fee must accompany the application. Application fees are nonrefundable except where the application is withdrawn prior to consideration by the Planning Board.
- E. **Technical Review Required.** Every application for conditional zoning shall conform to the technical review requirements set out in this ordinance.
- F. **Planning Board Review Required.** Following the required technical review, the application shall be placed on the agenda for consideration at the next regularly scheduled planning board meeting.
- G. **Planning Board Recommendation.** The planning board shall submit a recommendation to the town council with a statement describing the following:
1. Whether the proposed conditional district is consistent with the comprehensive plan and other officially adopted plans, as applicable;
 2. The uses to be permitted;
 3. Any required variation from the regulations of the underlying base zoning district, if any;
 4. Recommended conditions, if any.
- H. **Public Hearing Required.** Following consideration by the planning board, the application shall be forwarded to the Town Council for public hearing.
- I. **Notice of Hearing Required.** Public notice of the public hearing shall be posted, advertised, and mailed as follows:
1. *Posting.* Staff shall prominently post a notice of the public hearing on the site of the proposed rezoning or on an adjacent street or highway right-of-way within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required but the town shall post enough notices in strategically visible locations so as to provide reasonable notice to interested persons.
 2. *Advertisement.* Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of the hearing.
 3. *Mailing.* Staff shall mail a notice of the hearing to all property owners within 200 feet of the subject property by first class mail at the last address listed for such owners on the county tax records. The notice must be deposited in the mail at least ten but not more than 25 days prior to the date scheduled for the hearing. If this requirement would result in notices being sent to more than 50 different property owners, in lieu of mailed notice, the staff may publish a notice of the hearing as an advertisement in a newspaper of general circulation within the Town of Black Mountain, provided that such advertisement shall not be less than one-half of a newspaper page in size and all property owners residing outside the newspaper circulation area must still be notified by mail.

- J. **Approval.** The Town Council may approve or deny the application or may approve the application with reasonable and appropriate conditions attached. Any conditions to be attached must be consented to by the owner of the property in writing. The council shall adopt a brief statement describing whether its action to either approve or deny the proposed rezoning is consistent or inconsistent with the comprehensive plan or any other adopted plan. A certified copy of the ordinance bearing the signature of the property owner to evidence the property owner's consent shall be recorded in the records of the Buncombe County Register of Deeds within 30 days of approval.
- K. **Effect of Approval.** Following approval, the applicant may proceed with the development pursuant to the approved site plan. If the proposed development involves the subdivision of land, approval of the master plan and conditional zoning designation shall serve as preliminary plat approval for the purposes of this code.
- L. **Final Approval.** Approval of final plats conforming to the approved master plan shall be approved by the Subdivision Administrator without the need for additional review ordinarily required for subdivisions or special use permits.
- M. **Substantial Changes.** Any substantial changes to an approved plan shall be reviewed by the planning board and approved or denied by the town council as a text amendment to the zoning ordinance. The following changes are considered substantial for purposes of this section:
 - 1. The addition or removal of land from the zone;
 - 2. The additional or relocation of a building or structure;
 - 3. Addition or relocation of streets, roads, or driveways not contemplated in the original plan;
 - 4. Modification of special performance criteria, design standards, or other conditions or requirements specified by the enacting ordinance;
 - 5. A change in land use or development type beyond that permitted in the enacting ordinance;
 - 6. An increase in the total number of residential dwelling units; or
 - 7. An increase of more than ten percent in total floor area of any nonresidential structures.
- N. **All Other Changes.** The planning director shall have authority to review and either approve or deny any other proposed changes to the approved plan of development. Appeals from the decision of the planning director to approve or deny a proposed change shall proceed according to provisions in this ordinance.

2.04.07 Special Use Permits

- A. **Generally.** Review of a Special Use Permit is a quasi-judicial procedure whereby the Board of Adjustment verifies that a special use, as noted in [2.04.04](#), Land Use Matrix, complies with the requirements of this UDO and is appropriate for the location in question.
- B. **Purpose.** The purpose of a Special Use Permit review is to ensure that a use generally deemed incompatible with permitted uses in a given zoning district can be considered for approval with certain conditions placed on the use as denoted in this Section.
- C. **Applicability.** An application is required for the establishment of a new special use, a change to a special use, or the expansion of a special use that has not been approved.
- D. **Pre-application Technical Review.** The applicant shall schedule a pre-application meeting with the Planning Director to discuss the Special Use.
- E. **Application Requirements.** All applications for a special use permit must be accompanied by a site plan (drawn to scale) that includes all of the following information as applicable:
 - 1. A boundary survey showing the total acreage, zoning classification(s), date, and north arrow (with the north arrow oriented up, i.e., to the top of the map);

2. All existing easements, reservations and rights-of-way and all setbacks required for the zoning district;
 3. Proposed location of all structures, their approximate square area and general exterior dimensions;
 4. Proposed use of all land and structures;
 5. Traffic, parking, and circulation plan, showing proposed locate and arrangement of parking spaces and ingress and egress to adjacent streets;
 6. Proposed screening, including walls, fences, or planting areas, as well as treatment of any existing natural features;
 7. The name of the development, if applicable, and the name, address, and phone number of the owner;
 8. Approximate total acreage of the proposed development;
 9. Tentative street and lot arrangement, including designations of driveways, parking lots, open space, greenways, and stormwater management areas;
 10. Topography at five-foot intervals and the location of existing drainages or swales;
 11. A vicinity map showing the location of the development in relation to neighboring tracts, subdivisions, roads, or nearby buildings and their zoning and uses;
 12. Location of flood hazard areas from FIRM map;
 13. Location of existing or proposed utilities;
 14. Proposed signs and their locations;
 15. Proposed phasing, if any, and approximate completion time of the project.
- F. **Hearing.** The Board of Adjustment shall hold a quasi-judicial hearing to consider the special use permit application and shall, by majority vote, either approve, approve with modifications, or deny the permit application. The procedures for this hearing are detailed in [8.04.03](#).
- G. **Approval Criteria.** In determining whether to approve, approve with conditions, or deny a special use, the Board of Adjustment shall consider any applicable provisions of this Section in making its final decision and shall consider the following general criteria for each use below in addition to specific standards listed per use:
1. *Conformity.* The proposed special use will be in harmony with the area in which it is to be located and in general conformance with the Comprehensive Plan;
 2. *Ingress and Egress.* Adequate measures will be taken to provide ingress and egress to minimize traffic hazards and traffic congestion on the public roads;
 3. *Nuisances.* The proposed use will not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas;
 4. *Orderly Development.* The establishment of the proposed use will not impede the orderly development and improvement of surrounding property for uses permitted within the zoning district;
 5. *Health, Safety, and Welfare.* The establishment, maintenance, and operation of the proposed use will not be detrimental to or endanger the public health, safety, or general welfare; and
 6. *Other Provisions.* The proposed use complies with all other applicable provisions of this UDO.
- H. **Alteration to Approved Special Use Permits.**
1. *Minor Modifications.* Specific minor modifications to special use permits that do not involve a change in use or density may be reviewed and approved administratively include the following:
 - a. Reductions in signage or square footage;
 - b. Increases in landscaping, open space, or setbacks;

- c. Reorientation of structures that have an impact on the internal site only and do not position service entrances or rear facades alternatively from their original orientation; and
 - d. Realignment of approved ingress and egress as required by NCDOT or the Town of Black Mountain to better facilitate traffic safety.
- 2. *Major Modifications.* Any other modification of a special use permit shall follow the same process for approval as is applicable to the approval of a Special Use Permit. If multiple parcels of land are subject to a Special Use Permit, the owners of individual parcels may apply for permit modification so long as the modification would not result in other properties failing to meet the terms of the Special Use Permit or regulations. Any modifications approved apply only to those properties whose owners apply for the modification.
- I. **Specific Special Uses.** The following specific special uses shall be reviewed by the Board of Adjustment in accordance with 2.04.04, Land Use Matrix, with provisions applied. If there are no specific standards listed below with a Special Use, they are permitted without pre-set conditions if the Special Use Permit is approved. The Board may include additional restrictions for any use below:
 - 1. *Previous Legal Conforming Uses.* Special Use Permits may be issued on a case-by-case basis for uses that became legal non-conforming upon the adoption of the Town of Black Mountain Unified Development Ordinance effective _____. Use must have been continuous and in good standing with the Town of Black Mountain for application to be considered.
 - 2. *Multifamily Dwellings.*
 - a. Where two or more multi-family residential buildings are constructed under single ownership, whether simultaneously or at different times, the entire parcel of land occupied by such multi-family residential buildings shall be considered one lot and parking spaces and usable open space will continue to be available in the same proportions to all occupants of the buildings on the lot.
 - b. Minimum horizontal distance between any buildings or between any building and any lot line (other than a street right-of-way), shall be 25 feet.
 - c. Solid waste storage facilities shall be provided either in the form of a screened and accessible bulk container or individual containers for each dwelling unit. When used, individual containers shall be screened, uniform in appearance, marked with the number of the dwelling unit they serve, and provided with locking lids.
 - d. Structure(s) must meet all general requirements for the district except that the board of adjustment may require a lesser or greater front setback to harmonize with surrounding structures.
 - e. Landscaping consisting of grass, trees and ornamental shrubs shall occupy no less than five percent of the total lot area. The landscaping shall be done in addition to any required screening or buffer. The location and type of landscaping shall be shown on the site plan.
 - f. The architectural style, surface treatment and placement on the lot of the proposed structure shall be done in a way that is in harmony and in character with the surrounding properties and the neighborhood as a whole.
 - g. The plan shall provide for internal pedestrian circulation and connections to public rights-of-way, existing sidewalks, transit stops or greenways consistent with town construction specifications.
 - h. A clearly defined entrance to the parking area shall be provided of no more than 24 feet in width. Direct access to individual parking spaces from public rights-of-way shall not be allowed.
 - i. Parking shall be provided at a minimum rate of two spaces per dwelling unit. No grade within the parking area or access lanes shall exceed 14 percent.
 - 3. *Cottage Housing Development.*

- a. The purposes of this type of development and these accompanying guidelines are to:
 - i. Provide a housing type that responds to changing household sizes and ages (e.g., retirees, small families, single person households);
 - ii. Provide opportunities for ownership of small, detached dwelling units;
 - iii. Encourage creation of more usable open space for residents of the development through flexibility in density and lot standards;
 - iv. Preserve a housing type of small, free-standing cabins and cottages, a housing style that has historically existed in Black Mountain since its development as a retreat and vacation destination and to provide guidelines to ensure compatibility with surrounding land uses; and
 - v. To accommodate and encourage new types of housing options such as "Katrina Cottages," and free-standing structures of small footprint that are generally more affordable, energy efficient and sensitive to the land.
- b. Applicability. A cottage is a small, detached dwelling unit, not greater than 1,100 square feet in total floor area that may be developed at 1.5 times the density of the underlying zone. More than two cottages may occupy a single lot and may be owned separately. A cottage development may be developed in any zoning district except for HI-0.
- c. Density. Cottage housing developments shall contain a minimum of two free-standing structures located in a cluster to encourage a sense of community among the residents.
- d. General Design Requirements. In addition to the general SUP application requirements, the following guidelines shall be met:
 - i. Setbacks for all structures from the adjacent property lines along the perimeter of the site shall comply with all setback requirements of the district in which the development is located.
 - ii. The minimum distance between structures, including accessory buildings, shall be ten feet, and must have off-set windows and all fire safety codes related to building proximity and fire rated walls shall be met.
 - iii. The maximum built-upon area, including parking, driveways and buildings, shall be equal to or less than 66 percent of the total land area for the lot.
 - iv. Maximum height for cottages shall be 35 feet and the maximum height for accessory structures shall be 18 feet. All parts of the cottage roof above 18 feet shall be pitched.
 - v. Cottages must have a stoop or front porch that shall have a roofed porch at least 80 square feet in size with a minimum dimension of eight feet on any side.
 - vi. A pitched roof design is required for all parking structures.
 - vii. Cottages must not exceed 1,100 square feet of enclosed, habitable space. Cottage areas that do not count toward the total floor area calculation are:
 - (A) Unheated storage space located under the main floor of the cottage.
 - (B) Architectural projections such as bay windows, fireplaces or utility closets not greater than 18 inches in depth or six feet in width.
 - (C) Attached roofed porches.
 - (D) Detached garages or carports.
 - (E) Spaces with a ceiling height of six feet or less measured to the exterior walls, such as in a second floor area under the slope of the roof.

- viii. Accessory buildings and detached or attached garages or carports shall not exceed 200 square feet in size and shall not be used for residential purposes.
 - ix. Parking spaces may be spread out through the development connected to each cottage, clustered in a shared parking lot or some combination thereof at a minimum ratio of two spaces per unit; clustered parking for more than six vehicles must be screened from public streets and adjacent residential uses by landscaping or architectural screening.
 - x. Driveways, parking areas, and any common open space, parks, or stormwater management facilities, shall be considered common areas.
 - xi. The total square foot area of a cottage dwelling unit may not be increased. A note shall be placed on the title to the property for the purpose of notifying future property owners that any increase in the total square footage of a cottage is prohibited for the life of the cottage or duration of cottage regulations.
 - xii. Common area shall be outside of wet stormwater ponds, wetlands, streams, lakes, and sensitive areas and maintained. Private open space shall provide a private area around the individual dwellings to enable diversity in landscape design. Requirements:
 - (A) Common open space shall be a minimum of 400 square feet per cottage, abut at least 50 percent of the cottages in a cottage housing development, and have cottages abutting on at least two sides.
 - (B) Private open space shall be a minimum of 300 square feet of private, contiguous, usable space adjacent to each dwelling unit, for the exclusive use of the cottage resident. It shall be oriented toward the common open space as much as possible or in the rear or side yard areas with no dimension less than ten feet.
 - xiii. An existing detached or attached single-family dwelling that is incorporated into a cottage housing development as a residence and is nonconforming with respect to the standards of this section shall be permitted to remain on a site used for a cottage housing development. However, the extent of the non-compliance may not be increased unless the proposed change is determined by the zoning administrator to be consistent in character, scale and design with the cottage housing development. If the existing dwelling meets the requirements of this section with regard to size and is able to conform to other site standards, it may be counted as a cottage in the density calculation for the site. If the existing dwelling does not meet the size limitation for a cottage, then it shall count as one standard size dwelling.
4. *PUD- Residential. **Carry over from existing ordinance.***
 5. *PUD- Commercial. **Carry over from existing ordinance.***
 6. *Campground. **Carry over from existing ordinance.***
 7. *Recreational Vehicle Park. **Carry over from existing ordinance.***
 8. *Industrial Park Development.* In addition to the general SUP application requirements, the following guidelines shall be met unless the industrial park involves the redevelopment of an existing commercial, industrial, or manufacturing site or "Brownfield" where pre-existing conditions may require a variance from these requirements:
 - a. Industrial park developments must maintain the required setbacks for the district at their perimeter boundary. Driveways or parking may encroach into the setback, however a ten-foot landscaped or grassed buffer must be maintained along public roadways at all times. Sidewalks or greenways may be included in this ten-foot-wide area as indicated on the pedestrian master plan.

- b. Sites are required to finish all grades and sites with grass and other approved landscaping and landscaping is approved as part of the site plan review and a condition of a final occupancy inspection. Landscaped areas may contribute to the stormwater management plan in accordance with the town's phase II stormwater ordinance as applicable.
 - c. All parking must be improved with hard surface materials and incorporate stormwater management that retains and treats a 24-hour, one-year storm unless otherwise approved under the town's phase II stormwater ordinance requirements.
 - d. Lots must be designed to maximize access and safety. Adjacent developments shall share access points to the public roadway and parking wherever practicable and shall be designed so as to take advantage of existing traffic lights.
 - e. All sites are required to provide screening for outdoor storage areas and dumpsters which are visible from the public roadway. Outdoor storage must be identified on the industrial park plan and the screening to be used shall be specified. Screening requirements may be met with a minimum of a six-foot opaque fence or wall, or with a ten-foot buffer of evergreen trees which shall meet or exceed six feet in height within one year of the certificate of occupancy being granted.
 - f. Loading docks are required to be placed in side or rear yards or within the interior of the property. No loading docks shall face the street unless screened by other parts of the building, screening and landscaping.
 - g. Out-buildings or future expansion areas shall be designated on the plan with building envelopes. Provided that construction takes place within the approved building envelope, construction may proceed upon issuance of a building permit. Otherwise, expansion or amendment to the original plan shall require approval of the board of adjustment as an amendment to the SUP.
 - h. A tenant occupancy permit and inspection is required whenever a unit of the park changes ownership, tenancy, or use, to ensure that all building and fire safety codes are met.
 - i. All other requirements of the zoning district in which the development is located shall be met, including stormwater management and lighting requirements.
9. *Salvage Yard/Junkyard.*
- a. In addition to general SUP application requirements, a site plan must show the distance from the nearest edge of the right-of-way of any interstate or primary highway, or a North Carolina route.
 - b. Requirements:
 - i. The proposed site shall not be less than one nor more than five acres;
 - ii. The proposed site shall not be located nearer than 30 feet to any residence nor within one-half mile of another junkyard, measured from the boundary of the junkyard as shown in the approved site plan to the nearest residential structure.
 - iii. Screening of a minimum eight-foot-high fence and evergreen barrier shall be required along any boundary abutting a residential lot or residentially zoned lot or public right-of-way.
10. *Hunting and Game Preserve (Commercial).* No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.
11. *Pet Care Service (with outdoor kennels).*
- a. Minimum Distance from Residential. Any building used for the boarding of animals shall be located at least 200 feet from any residential use or residential zoning district boundary, school, day care facility, or public park, other than a dog park, measured as a radius from property lines of the limited use.

- b. **Sound-Proofing.** Where the site is located adjacent to a residential use or zoning district boundary, all buildings used for the care or boarding of animals shall be fully enclosed and sound-proofed so animal noises will not be audible from a property line.
 - c. **Hours for Outdoor Dog Runs and Animal Exercise Areas.** Where the site is located adjacent to a residential use or zoning district boundary, outdoor dog runs shall not be used, and no other outdoor animal exercise shall occur, between the hours of the Town of Black Mountain Noise Ordinance requirements.
 - d. **Front Yard Maintenance.** The front yard area shall not be used for animal exercise, and all yards shall be cleared daily of any animal waste.
 - e. **Screening of Outdoor Dog Runs and Animal Exercise Areas.** Any outdoor dog runs or animal exercise areas visible from a public right-of-way or adjacent residential use or zoning district boundary shall be enclosed by a solid masonry or concrete wall or an opaque fence having a minimum height of five feet.
 - f. **No Nuisance Created.** The use shall not create or cause any perceptible noise or odors that constitute a public or private nuisance to neighboring properties.
12. ***Cemeteries & Mausoleums.*** No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.
 13. ***Country Club and Golf Course.*** No special requirements if approved. Additional requirements may be added as part of the review. Restaurants, pro shops, and other accessory uses customarily associated with such use may be allowed as part of an approved Special Use permit. The State of North Carolina provisions for this use shall be considered as part of the review request.
 14. ***Park-and-Ride Facility/Transit Terminals.*** No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.
 15. ***Amateur Radio Antenna.*** The Town, based on health, safety, or aesthetic considerations that regulates the placement, screening, or height of the antennas or support structures of amateur radio operators will reasonably accommodate amateur radio communications and must represent the minimum practicable regulation necessary to accomplish the purpose of the Town. The Town may not restrict antennas or antenna support structures of amateur radio operators to heights of 90 feet or lower unless the restriction is necessary to achieve a clearly defined health, safety, or aesthetic objective of the Town.
 16. ***Dance Halls, Night Clubs, Private Clubs, Bars, Lounges, Taverns, Pubs.*** A special use permit shall be required for a use in this category. This review shall also establish if business hours may extend past 11 pm or prior to 7 am.
 17. ***Funeral Home and/or Crematorium.*** No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.
 18. ***Liquor Sales (ABC).*** No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.
 19. ***Sexually Oriented Businesses (SOBs).*** These businesses should be located in specific areas of the Town which are a specified distance from sensitive uses such as residences, parks, religious institutions and schools, irrespective of whether physical barriers are present. This is necessary to provide certainty to the residents and sexually oriented business operators with respect to potential adult use sites.

- a. Authorization. These regulations are authorized by NCGS § 160D-902.
 - b. Applicability. The provisions of this Section apply to any sexually oriented business/adult establishments.
 - c. Size. The gross floor area is limited to 3,000 with all business activity conducted inside.
 - d. Sleeping Quarters. No sleeping quarters shall be permitted, except for an adult motel.
 - e. Parking. No enclosed or underground parking is permitted.
 - f. Locational Standards.
 - i. Other SOBs. No sexually oriented business or adult establishment shall be located within 2,000 feet of any other sexually oriented business or adult establishment. There shall be one per parcel.
 - ii. Sensitive Uses. No sexually oriented business or adult establishment shall be located within 2,000 feet of a public or private elementary or secondary school, Day Care use category, public or private recreation center, religious institution, or a public park.
 - iii. Residentially Zoned or Used Property. No sexually oriented business or adult establishment shall be located within 2,000 feet of any residentially zoned or used property.
 - iv. ABC Licensed Facility. No sexually oriented business or adult establishment shall be located within 2,000 feet of a business with an active ABC License.
 - v. Protected Corridors. These shall be the same as those protected as overlay corridors.
 - g. Signs and Displays. Signs shall be regulated in accordance with Chapter 4 except that no sexually oriented printed material, slide, video, photograph, written text, live show, or other sexually oriented visual display shall be visible from outside the walls of the establishment, nor shall any live or recorded voices, music or sounds be heard from outside the walls of the establishment.
 - h. Minimum Distances Not Eligible for Variance. The minimum separation distances within this section are not eligible for variances.
- 20. *Fuel Sales*. No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.
 - 21. *Manufactured and Modular Home and Storage Building Sales*. No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.
 - 22. *Resource Extraction Uses/Mining*. No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.
 - 23. *All Other Waste Related Service*. No special requirements if approved. Additional requirements may be added as part of the review. The State of North Carolina provisions for this use shall be considered as part of the review request.
 - 24. *Additional Accessory Structures*. Special Use permits may be issued by the Board of Adjustments for additional residential accessory buildings exceeding guidelines when property exceeds 2 acres.
- J. **Additional Requirements from the Board of Adjustment.** In granting a Special Use Permit, the Board of Adjustment may impose additional restrictions and requirements upon such Special Use Permit as it may deem necessary in order that the purpose and intent of this UDO are served and they have the statutory authority to do so. Procedures are located in [8.04.03](#).

2.04.08 Accessory Use and Structure Standards

2.04.08.01 General Provisions

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

2.04.08.02 Accessory Uses

2.04.08.03 Accessory Structures

- A. **District Specific Requirements.**
 - 1. *Industrial.* In industrial districts, there is no limit to the number of accessory structures provided that such structures are incidental to the industrial use.
 - 2. *Commercial.* In commercial districts, unless otherwise provided in a special use permit, no more than two accessory structures shall be permitted per lot.
 - 3. *Office and Institutional.* **NEED TO DISCUSS.**
 - 4. *Residential and Mixed-Use.* In residential and mixed-use districts, no more than two accessory structures shall be permitted per lot, provided that any such structure shall meet the following requirements:
 - a. Accessory structures shall not be more than two stories.
 - b. For lots adjacent to town or state roadways, accessory structures shall be located only in the side or rear yards.
 - c. For lots not adjacent to town or state roadways, accessory structures may be located in what is determined as the front yard by the zoning administrator. The accessory structure may be located no further forward than the primary structure furthest from the road of any adjacent properties never to be less than the existing setback requirements.

- d. Accessory buildings shall not cover more than 30 percent of the required side or rear yards. Accessory structures may require screening at the direction of the zoning administrator if the accessory structure may be considered a nuisance under the town's nuisance regulations or if it is being used for commercial purposes while abutting a residential use or district.

B. Dimensional Requirements.

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

C. Site Requirements.

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

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

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

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

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

1. *Swimming Pools.* A private swimming pool along with incidental installations, such as pumps and filters, is permitted in any residential zoning district subject to the following standards:
 - a. Location.
 - i. The swimming pool and incidental installations shall not be located in the front yard.
 - ii. The swimming pool shall be set back from all lot lines a distance of not less than five feet.
 - b. Screening. All swimming pools shall be enclosed from adjoining lots by the Principal Building, an Accessory Building, a solid wall, or a protective fence of not less than four feet in height.
 - c. Building Code Requirements. All swimming pools must also meet the requirements for the North Carolina State Building Code, including fence requirements.
2. *Solid Waste Storage Areas.* Solid Waste Storage Areas for all uses not employing roll cart garbage collection shall meeting the following requirements:
 - a. Screening Required. Solid waste dumpsters or other large containers for solid waste or recycling storage shall be confined in an enclosed area that is screened on all sides.
 - b. Size and Material. A solid waste enclosure, large enough to confine solid waste items and dumpster(s), shall be of solid opaque construction, six-foot high with latching gates providing

access, and shall be composed of materials consistent and compatible with those of the principal building(s) on the site.

- c. Location. No solid waste storage area shall be located in any front building yard setback or any street yard or buffer yard.
 - d. Lid Required. Solid waste dumpsters or other large containers for solid waste storage shall have a lid to minimize the potential contamination of stormwater runoff.
3. Clothing Donation Drop Off Sites.
- a. *Unattended Clothing Donation Containers.* Unattended clothing donation containers are prohibited unless located at the operational site of a company or organization that collects used clothing for resale or donation as a primary business function.
 - b. *Removal of Prohibited Clothing Donation Containers.* Prohibited clothing donation containers that exist at the time this section is adopted shall be removed within 30 days of adoption.

2.04.09 Temporary Use and Structure Standards

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

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

Table 2.04.09-1 Permitted Temporary Uses and Structures

TP = Temporary Permitted Use -- = Prohibited Use Maximum Events per Year / Days per Event (Duration Column)		Zoning District									
Temporary Use	Duration (Maximum Events per Year/Days per Event)	CR-1	SR-2	TR-4	UR-8	NMU-8	OI-6	CBD	HB-8	LI-8	HI-0
Temporary Storage Container	2/120	P	P	P	P	P	P	P	P	P	P

¹See 3.02.03.

- D. **Review Criteria.** All temporary uses listed in this Section require a Temporary Use Permit. The Director shall not approve or modify and approve an application for a Temporary Use Permit unless the following general criteria, specific regulations and time limitations are met in addition to standards for any particular temporary use as specified.
1. **Compatibility with and/or Effect on Surrounding Area.** The allowance of such use shall not be detrimental to the public health, safety, and general welfare, and the use shall be consistent with the purpose and intent of this UDO and the specific zoning district in which it will be located. The use must also be compatible in intensity, characteristics, and appearance with existing land uses in the immediate vicinity of the temporary use. In addition to those listed herein, factors such as location, noise, odor, light, dust control and hours of operation shall be considered.
 2. **Public Convenience and Litter Control.** Adequate public restroom facilities and waste containers shall be required on-site. These can be permanent for another use and allowed to be accessed by the temporary use or as portable facilities provided for the temporary use.
- E. **Cessation of Use.** After the temporary use is finished, the site shall be returned to its condition prior to the temporary use being established, including, but not limited to, removal of all litter and any other facilities related to the use, at no expense to the Town of Black Mountain.
- F. **Outdoor Lighting.** All light sources must be directed inward to the site and downward and away from adjacent properties.
- G. **Utilities.** Temporary uses must provide sufficient potable water and adequate sewage disposal.
- H. **Number per Parcel.** Only one Temporary Use Permit shall be permitted for a single parcel of land at any given time.
- I. **Signs.** Signage for temporary uses shall be permitted only within the time frame for which the temporary use is permitted in accordance with the sign standards in [Chapter 4](#).
- J. **Property Line Setbacks.** Structures and/or display of merchandise shall comply with property line setback requirements of the zone district within which it is located. The items shall be displayed so as not to interfere with the sight triangle of the intersection of the curb line of any two streets or a driveway and a street. In no case shall items be displayed, or business conducted within the public right-of-way.
- K. **Parking and Access.** Adequate off-street parking shall be provided to serve the use. The use shall not displace the required off-street parking spaces or loading areas of the principal use. The entrance and exit drives shall be designed to prevent traffic hazards and nuisances.

- L. **Traffic.** The location of the temporary use or structure shall be such that adverse effects on surrounding properties will be minimal, particularly regarding any type of traffic generated or impacted by the temporary use or structure and impact upon traffic circulation in the area.
- M. **Location (Permission Required).** The use shall not be on publicly or privately owned property unless the applicant first obtains written approval from the owner.
- N. **Emergency Access.** The use shall not block drive aisles, other access to loading/service areas, or emergency access and fire lanes. It must also be positioned at least 15' away from fire hydrants, any fire department connection, driveway entrances, and accessible parking spaces.
- O. **Period of Time Between Permits.** The period of time an expired Temporary Use Permit on a parcel and application for another Temporary Use Permit on that parcel shall be at least three months. This restriction shall not apply to real estate development and constructed related temporary uses.
- P. **Similar and Compatible Uses not Specified.** If a particular temporary use is not listed in this UDO, the Director shall have the authority to grant a temporary use permit for a similar and compatible use. Determination of what constitutes similar and compatible shall be made by the Director. In such instances, the applicant shall provide the following information:
 - 1. Type of use;
 - 2. Number of employees;
 - 3. Parking/circulation needs/hours of operation; and
 - 4. Duration of operation.
- Q. **Appeals.** If the Director determines that the use is not similar and compatible, the applicant may appeal the decision to the Board of Adjustment.

§ 2.05 Measurements and Allowances

2.05.01 Measurements

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

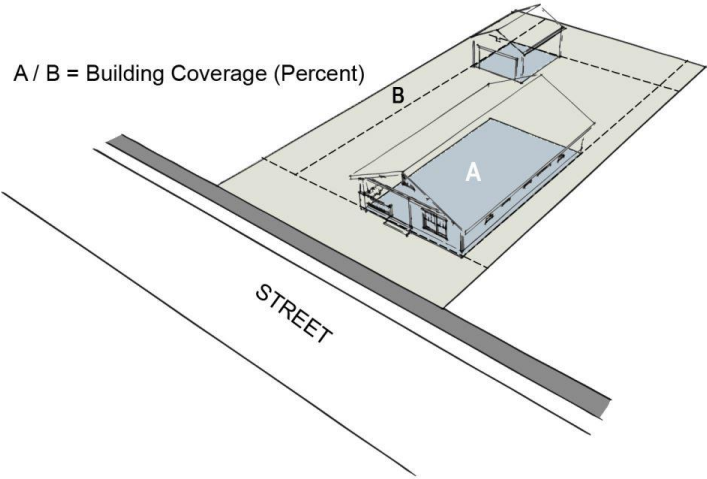
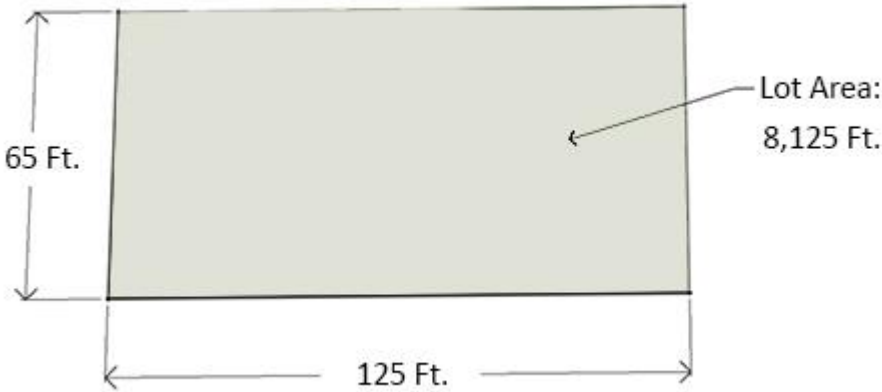
Table 2.05.01-1, <i>Measurements</i>		
Measurem ent	Methodolog y	Illustration
Lot Coverage	The area of a parcel occupied by permanently anchored primary and/or accessory buildings, including in-ground pools, walkways, driveways, decks, and patios.	 A / B = Building Coverage (Percent) B A STREET
Lot Area	The total horizontal area included within property lines.	 65 Ft. 125 Ft. Lot Area: 8,125 Ft.

Table 2.05.01-1, *Measurements*

Measurement	Methodology	Illustration
Lot Width	For an interior parcel, the horizontal distance between the side property lines, measured at the required front setback line. For a cul-de-sac parcel, the horizontal distance between the side property lines measured at the front setback line.	

Table 2.05.01-1, Measurements

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

2.05.02 Specific Allowances

- A. **Setbacks.** The following features may encroach into any required building setback:
1. **Outdoor Seating.** Outdoor seating associated with a Restaurant use may project a maximum of five feet into a required front setback, provided the space is at grade and is separated from the right-of-way by landscaping or a vertical barrier;

2. *Bay Windows or Other Structural Overhangs.* Bay windows or other structural overhangs, not to exceed three feet, are permitted to encroach into the setbacks provided they do not violate a section of the adopted building code;
 3. *Chimneys.* Chimneys, not to exceed two feet;
 4. *Heating and Cooling.* Heating and cooling units, not to exceed three feet;
 5. *Architectural Features.* Overhanging roof, eave, gutter, cornice, or other architectural feature and awnings, not to exceed two feet;
 6. *Other Projections.* Decks, steps, uncovered porches, patios, and terraces (non-enclosed), not to exceed six feet;
 7. *Fences and Walls.* Fences and Garden/Yard Walls; and
 8. *Accessory Structures.* Any permitted accessory structure or use customarily incidental to the permitted primary use or building as long as it meets the required setbacks for accessory structures.
 9. *Projections into Front Yards in Commercial and Industrial Districts.* In commercial and industrial districts open, unenclosed gasoline pump canopies, gasoline filling and related equipment and similar facilities may project into one—half (1/2) the front yard setback requirement for the district.
 10. *ADA and Life Safety.* If an ADA accessibility or life safety feature cannot meet this requirement due to the location of an existing structure or other impeding site feature on a residential lot, the setback requirement shall be waived to the extent necessary to accommodate the accessibility or life safety feature.
- B. **Height.** Zoning district height limits shall not apply to communication towers, belfries, cupolas, spires, domes, monuments, airway beacons, structures for essential services including hospitals, windmills, flagpoles, chimneys, or chimney flues. Height limits shall not apply to any bulkhead, elevator, water tank, or to any similar structure or necessary mechanical appurtenance extending above the roof of any building if such structure does not occupy more than 33 percent of the area of the roof. All structures shall meet the required North Carolina Building Code.

UDO Summary

Chapter 3: Building and Site Design

Chapter overview: Chapter 3 address standards for multiplexes and apartments, for nonresidential and mixed-use districts, for the Central Business district, and sustainability and LEED incentives. In addition, the chapter addresses parking, loading, stacking and lot access, and right-of-way standards, and driveway design standards and regulations.

Examples of standards for multiplexes and apartments include:

- Requirement that multiplexes containing three or four units appear as a large single-family dwelling
- Flexibility to allow the front setback to harmonize with surrounding structures
- Minimum distance between buildings or between any building and any lot line
- Screening of solid waste storage facilities
- Landscaping requirements
- Internal pedestrian circulation requirements
- Clearly defined entrance to the parking area

Examples of standards for nonresidential and mixed-use districts include:

- Exterior material composition and consistency
- Transparency of the facades at the ground level of buildings
- Articulation (such as reducing or breaking up blank walls)
- Structure access
- Lot access

Examples of standards for Central Business district include:

- Complementary rooflines and parapets that are complementary to surrounding buildings and to the rhythm of the district's buildings
- Screening of trash and storage areas
- Prohibition on the outdoor display or use of shipping containers
- Limits on the boarding up of windows
- Upper floor window treatments

Examples of standards for sustainability and LEED incentives include:

- Building permit rebates for energy efficient design and for the construction of homes affordable to households at low to median income levels

Standards for industrial uses and for infill and redevelopment sites may be developed

Items coming over from existing Code: Manufactured homes, apartments, sustainability and LEED incentives, parking design, accessible parking, off-street loading, stacking, lot access, right-of-way standards, driveway design standards and regulations, site and parking lot landscaping, and bufferyard landscaping

Significant changes:

- New standards for site design and for infill and redevelopment sites
- New figures depicting parking space dimensions and accessible parking dimensions
- New illustrative examples of enclosed loading and vehicle stacking



CHAPTER 3: BUILDING AND SITE DESIGN

Contents:

- § 3.01 Applicability and Purposes
- § 3.02 Site Design
- § 3.03 Parking, Loading, Stacking, and Access
- § 3.04 Trees, Landscaping, and Buffering

§ 3.01 Applicability and Purposes

3.01.01 Applicability

- A. **Generally.** The purpose of design standards are to acknowledge that development will occur in a manner that promotes, protects, and improves the general health, safety, and welfare of the people and conserves the character of the Town of Black Mountain. These protections are set out to ensure that the Town continues to provide a desirable environment for residences, recreation, education, culture, commerce, and industry. These protections are set out below. The standards of this chapter apply to new development, redevelopment, substantial improvement, and expansions of use, sites, and buildings, as shown on Table 3.01.01-1, *Building and Site Design Standards Applicability*.
- B. **Conformance with Town Plans and Policies.** All development within the Town of Black Mountain shall be done in conformance with Town Plans and Policies including but not limited to the Elevate Black Mountain Comprehensive Plan.
- C. **Timing of Compliance.** The Town will not issue a Certificate of Occupancy until all site improvements required in this Ordinance are constructed in conformance with the approved permit or plan.

Table 3.01.01-1
Building and Site Design Standards Applicability

Type of Development	Sections of this Ordinance			
	Site Design	Parking, Loading, Stacking, and Access	Trees, Landscaping, and Buffering	Signs, Outdoor Lighting, and Public Art
	◆ = Section Applies			
New residential, nonresidential or mixed-use development or change in use from residential to nonresidential or mixed-use	◆	◆	◆	◆
Increase in apartment units or impervious surface by 50 percent or more	◆	◆	◆	◆

Table 3.01.01-1
Building and Site Design Standards Applicability

Increase in apartment units or impervious surface by 25 to 49 percent	◆	◆		
Change in use requiring 10 or more additional parking, loading, or stacking spaces		◆	◆	◆
Increase in apartment units or impervious surface by less than 25 percent	◆	◆	◆	◆
Change from a nonresidential or mixed-use to another nonresidential or mixed-use that increases peak hour trips by 25 percent or more or generates 100 vehicles trips or more (entering/exiting combined) during either the adjacent road's peak hours(s) or the Development's peak hour(s), whichever is less		◆		◆
Construction of a new sign or structural modification of an existing sign				◆

3.01.02 Purposes

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

§ 3.02 Site Design

3.02.01 General Provisions

- A. **Generally.** Unless otherwise specified, the general provisions of this Subsection shall apply to all multi-family, single-family attached, nonresidential, mixed use, downtown, and industrial buildings.

- B. **Amenity Area.** Projects containing groups of buildings to be devoted primarily to office and/or retail activities shall incorporate amenity areas into the site design. Amenity areas include, but are not limited to, public plazas, promenades, water features, clock towers, courtyards, squares or small parks on the site. Design elements to be included in the amenity areas are seating walls, benches, outdoor dining/gathering areas, decorative fountains or water features, clock towers and/or garden areas. Since the purpose of these amenity areas is to serve as pocket recreational areas and to help foster a sense of community, additional elements shall be considered if the applicant demonstrates to the Director that the design meets the intent of this Section.
- C. **Mechanical Equipment.** All rooftop mechanical and electrical equipment shall be completely screened from view from all public streets and adjacent properties. All screening walls/parapets shall be constructed and designed of materials compatible to that of the primary structure and shall be incorporated into the design of the structure. Metal screening walls shall not be permitted. Appurtenances such as heating and air conditioning equipment, coolers, etc. shall be screened entirely from public view and shall be designed and finished to match adjacent building materials. In addition to design elements, landscape materials shall be incorporated to provide additional screening and/or softening of equipment areas.
- D. **Outdoor Storage and Dumpsters.**
1. *Outdoor Storage.* Any outdoor storage area adjoining residentially zoned property shall be completely screened from the adjoining residentially zoned property using a screening device.
 2. *Dumpsters.* Dumpsters are allowed in all districts in accordance with the following standards:
 - a. All dumpsters must be maintained in good working condition and their exterior shall be kept clean, free of debris, accumulations, or effluent.
 - b. No dumpster shall contain hazardous material unless it is designed to contain such material or is lined, and that such containment is approved by the EPA.
 - c. Dumpsters which contain oil and grease shall not leak.
 - d. Dumpsters must be screened from the public right-of-way and from abutting residential property boundaries. Screening shall be with an opaque wall or fence that is at least one foot higher than the dumpster itself. Vegetative buffers of evergreen of sufficient height and density to meet the opaque screening requirement and which are a minimum of ten feet in width, may be permitted in lieu of a structural screen upon approval of the Director.
 - e. Screening provided to meet town requirements must be maintained in good condition and on a continuous basis.

3.02.02 Zero Lot Line

- A. **Purpose.** The purpose of this Section is to provide reasonable design standards for detached single family dwelling development with zero lot lines, where permitted. In a zero lot line development, houses are shifted to one side of the lot. This provides for greater usable yard space on each lot. These developments require that planning for all of the house locations are done at the same time. Because the exact location of each house is predetermined, greater flexibility in site development standards are possible while assuring that the single-family detached character of a neighborhood is maintained.
- B. **Easements.**
1. *Eaves.* The eaves on the side of a zero lot line house may not encroach on the property line of the adjacent property. During construction, the entire structure should be maintained within the property line.

2. **Maintenance Easement.** An easement to allow for maintenance or repair is required when the eaves or side wall of a zero lot line house are within four feet of the adjacent property line, as depicted in Figure 3.02.02, Maintenance Easement. The easement on the adjacent property shall provide at least five feet of unobstructed space between the furthestmost projection of the zero lot line house and the further edge of the easement.

Figure 3.02.02, Maintenance Easement

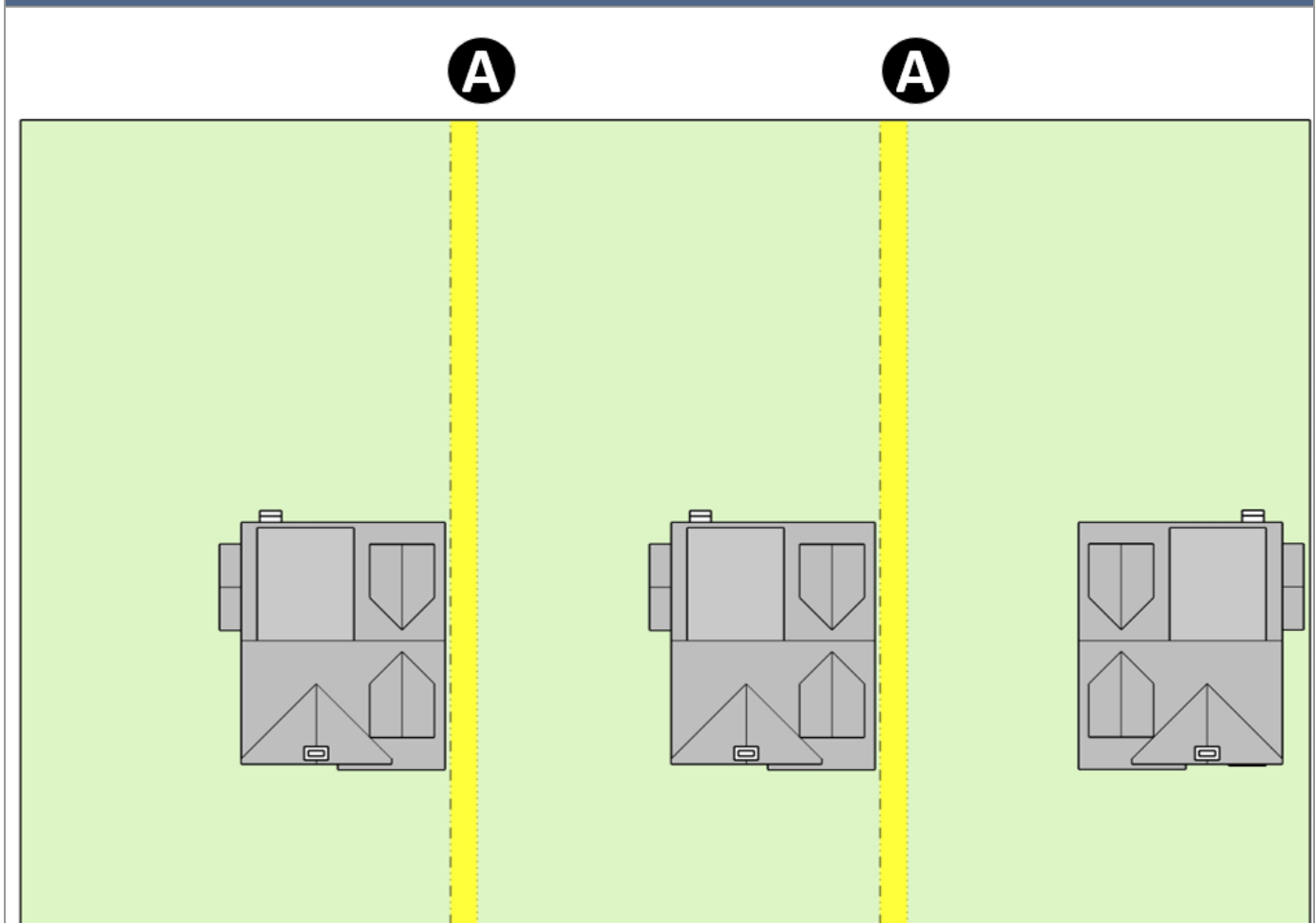


FIGURE NOTES:

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

- C. **Privacy.** If the side wall of the zero lot line house is within three feet of the property line, windows or other openings that allow for visibility into the side yard of the adjacent lot are not permitted. Windows that do not allow visibility into the side yard of the adjacent lot, such as a clerestory window or a translucent window, are permitted.
- D. **Building Separations.** In no case shall the reduced setbacks result in a distance of less than 10 feet between principal residential structures.
- E. **Subdivision Plat Notes.** The reduced setbacks and easements required in this Subsection shall be pre-determined and shall be clearly denoted on the plat.

3.02.03 Manufactured Homes

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

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

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 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.
 - 4. *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.
 - 5. *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.
 - 6. *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.
 - 7. *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 Three 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 Town of Black Mountain 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. *Sides and Backs.* Both sides and back of a building with double street frontage shall use the same materials and architectural detailing throughout.
4. *Prohibited Materials.* No building elevation may be fully built with sheet or corrugated aluminum, iron or steel, plain concrete, plain concrete block, 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.
5. *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 CB 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:
 - i. Change in plane;
 - ii. Change in texture or masonry pattern; or
 - iii. 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.*
 - a. Structures shall be sited so that the primary access is from the street front sidewalk leading to the parking area.
 - b. In the event that a structure is located on a DOT Road, the Planning Director may permit the primary access to be located facing the parking area.
 - c. 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.
 - d. 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 corridor 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.
 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. Long expanses of awning should be broken into segments that reflect the door or window openings beneath them.
 - b. Awnings cannot extend across multiple storefronts and/or multiple buildings.
 - c. 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.
 - d. Backlighting or illuminating awnings may be allowed with Planning Director approval.
 - e. Awnings must project a minimum of 36" from the building.
 - f. 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. *Roofs and Parapets.*
 - a. Parapets should be embellished with brick detailing and stepped or sloped.
 - b. 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.
3. *Utility Areas (Alleys), Mechanical Equipment Screening, and Outdoor Storage.*
 - a. Exterior trash and storage areas, service yards, loading areas, transformers and air conditioning units must be screened from view with brick or wood fencing or opaque evergreen landscaping. It is required to keep all public right-of-ways (sidewalks) clear of trashcans and debris.
 - b. Outdoor display or use of materials associated with manufacturing, processing, repair or storage is prohibited.
4. *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.
5. *Materials.* The following materials are prohibited:
 - a. Franchise architecture that is out of character with the standards herein.
 - b. Aluminum, vinyl or fiberglass siding or roofing materials.
 - c. Concrete block or brick larger than 4" in height, 12" in length.
6. *Streetscape.* When a new or redevelopment project disturbs existing streetscape elements those items must be replaced with approved streetscape elements.
7. *Upper Floor Treatments.* Upper floor windows shall be restored using materials similar to lower floors.
8. *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.
9. *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.

3.02.08 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. *Central Business District.* There shall be no parking standards for the Central Business District.
 2. If signage has the capability of being lit in the evening, the source of light must not be visible to motorists or pedestrians.
 3. Signs constructed of materials such as metal or wood are preferred.
 4. 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.

5. No plastic molded internally lit signs are allowed.
 6. 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.
 7. Internally illuminated signs (not including neon) are prohibited except for theater signage.
 8. 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.
 9. 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.
 10. 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.
 11. 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.
 12. *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.
 13. *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-site 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.**
 - J. **Maintenance.** All off-street parking areas shall be maintained and be 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.
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.
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 section for mobile home park requirements.
Mortuary or funeral home	One space for each two seats in the assembly room or chapel.
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	Single-Family and Duplex: 2 spaces per dwelling unit. Secondary Dwelling: 1 space per unit. Multiplex and Apartment: 1.5 per unit for one and two bedroom units. 2 spaces for three or more bedrooms.
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.* An RV or camping trailer shall be permitted on a lot in any residential district. The trailer shall not be occupied permanently while it is parked or stored.
 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.* Paved parking in all developments may be in excess of the maximum up to 10% with the use of 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 over time.

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.

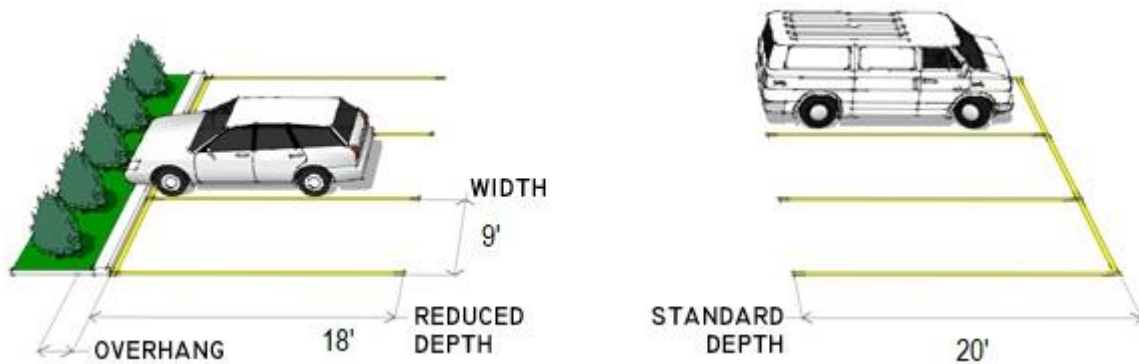
- 1. Two-way entrances or aisles to a parking lot with parking on both sides of the aisle shall be no less than 24 feet wide.
- 2. Two-way entrances or aisles where parking is only provided on one side of the aisle shall be no less than 22 feet wide.
- 3. One-way entrances or aisles where parking is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

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 if:
 - 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 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



- K. **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.
- L. **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. The location of bicycle parking may be either in the location of the parking spaces being exchanged, in bicycle racks on the property, or in another method meeting the required numerical standard.
3. *Shared.* While complying with shared parking requirements, 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.

UDO Summary

Chapter 8: Development Review Procedures

Chapter overview: Chapter 8 consolidates all development review procedures and establishes development review duties related to recommendations, final decisions, and appeals

Items coming over from existing Code: application submittal requirements, hearing procedures, appeals, review procedures for administrative, legislative, and quasi-judicial matters

Significant changes:

- Groups all review procedures into one place
- Adds common decision criteria
- Appeals of HPC to go straight to Superior Court rather than Board of Adjustment
- Details inactive and expired permit application process
- Created a development review summary table
- Created a section for administrative review, legislative review and quasi-judicial review
- Provides guidance on written interpretations
- Created a process for adequate public facilities certification
- Details administrative adjustment allowances for signs
- Updated conditional zoning regulations
- Adds review procedures for exempt and family subdivisions
- Adds methods of annexation requirements



CHAPTER 8: DEVELOPMENT REVIEW PROCEDURES

Contents:

- § 8.01 Purpose, Applicability, and Common Review Procedures
- § 8.02 Administrative Review Procedures
- § 8.03 Legislative Review Procedures
- § 8.04 Quasi-Judicial Review Procedures
- § 8.05 Subdivision Review Procedures

§ 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. The appropriate council, board, commission or staff person shall make the final decisions on development permits.
- 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 OI-6 or CB districts; or
 7. Projects in an Overlay District.
- C. **Sketch Plan Required.** A sketch plan of the project shall be prepared for the consultation, drawn approximately to scale (1 inch = 60 feet). Sketch plans for subdivisions, special use permits, and conditional districts 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 Town's website or at Town Hall.
- 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 20 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 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, 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;
 - 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; or
 - 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 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 development application or provide the application to the appropriate Council, board, commission, or staff empowered by this UDO to review and make a final decision on the application; or
 3. *Distribute.* Distribute the development application to the appropriate Council, board, commission, or staff for recommendation or final decision.
- C. **Required Revisions.**
1. *Comments.* During application review, the Planning Director may provide comments from Council, board, commission, or staff, 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 shall refer the application to Council, board, commission, or staff.
- 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 Review.* 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 Review.* If the application requires a public meeting or evidentiary 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, Council, board, commission, or staff 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 Council, board, commission, or staff 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 Applications¹	Legislative Applications	Quasi-Judicial Applications¹
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 , <i>Purposes</i> , 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 Council, board, commission, or staff.
- 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 evidentiary hearings, as required and if necessary, 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 an evidentiary 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 evidentiary hearings.
- C. **Public Meetings.**
 - 1. *Public Meeting Required.* Any development application that does not require a evidentiary 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. **Evidentiary 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. Persons appearing at an evidentiary hearing shall identify themselves and state their address and similar information about any organization they represent.
 - c. 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.
 3. *Attendance by Applicant at Hearing.* An applicant or representative is required to attend the 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 hearing may constitute grounds for a continuance of the hearing to a certain new date or closing of the 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 Evidentiary 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 Council, board, commission, or staff holding the meeting or hearing.
 2. *No Further Action.* Unless such modifications are so substantial that the Council, board, commission, or staff 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.** 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.
 - 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. **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.
 - I. **Recordation of Plat.** The applicant shall record any approved plat with the Buncombe County Register of Deeds within the time limits of 8.01.12, Development Review Summary, or the plat shall expire.
 - J. **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 decisions 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 Plat, may

appeal to the Superior Court for Buncombe County, North Carolina 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 Council, commission, board, or staff.
 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 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 applications. Any extensions must be expressly requested by the applicant, in writing, and approved by the appropriate Council, commission, or board which originally took the final action.
 - b. Before granting an extension, the Planning Director, Council, commission, or board 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, Council, commission, or board 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)	N/A	12 months	Subdivision Administrator		N/A
Construction Plans (8.02.04)	For subdivisions, before approval of final plat; For permits, before permit is issued	12 months	Planning Director		N/A
Zoning Approval (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	Zoning Administrator		N/A
Building Permit (8.02.06)	Prior to a building or other structure being erected, moved, added to, or structurally altered.	8.02.06	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	Public Works 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.	Per Permit	Buncombe County or MSD		N/A
Sign Permit (8.02.10)	Prior to installing or substantially modifying a sign	12 months	Zoning Administrator		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
Certificate of Occupancy (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	Building Official		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 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	Building Official		N/A
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. The Council, Board, or Commission will 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
Special Use Permit (8.04.03)	Prior to establishing any use requiring a Special Use Permit	12 months	1st: TRC 2nd: ZA	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	
Appeal of Administrative Decision (8.04.04)	Within 30 days of the official decision	12 months	N/A	BOA	8.01.07
SUBDIVISION APPLICATIONS: Require final decisions related to dividing larger tracts of land into smaller lots. Town staff or appropriate board or commission will 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 ²	Planning Board or Zoning Administrator (depending on specifics)	Director	N/A
TABLE NOTES: PB=Planning Board, TC=Town Council, BOA=Board of Adjustment, HPC=Historic Preservation Commission, TRC=Technical Review Committee, ZA=Zoning Administrator 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 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 Evidentiary 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. **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.

C. 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 plans have been approved.

8.02.05 Zoning Approval

- 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 six months 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. In the event that work ceases for 12 months, the permit is invalid.
- 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 appropriate council, board, commission, or staff 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 appropriate council, board, commission, or staff 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 occupancy and compliance is obtained from the building inspector.
 2. A residence shall not be converted to a non-residential use until a certificate of occupancy and compliance 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 occupancy 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.**
 - 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 appropriate council, board, commission, or staff 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 where the sign is located; and to enhance retail areas 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 Town. Applications are available for public review and comment.
- D. **Approval Criteria**. The standards in this chapter may be adjusted administratively when it is determined 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 form 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 appropriate council, board, commission, or staff 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.** A proposed amendment to the text of the development regulations 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 and fees, 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 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, 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 appropriate council, board, commission, or staff 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 public 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.
- 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 may be sought.

8.03.03 Conditional Zoning Approval

- A. **Timing and Submittal of Application.** All applications for conditional zoning 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 online or at Town Hall.
- 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. All applicable elements such as 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. Notation if it is greater than, same as or less than the underlying zoning district;
 - 4. A full list of the proposed uses consistent in character with the underlying zoning district, whether permitted by right or conditionally;
 - 5. A proposed development schedule if the development is to proceed in phases;
 - 6. Identification of any required variation from existing regulations of the underlying base zoning district;
 - 7. A list of proposed conditions, if any;
 - 8. 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 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 zoning 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 conditional zoning 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 Historic District 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 20 days prior to the next regularly scheduled meeting of the Historic Preservation 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 in the Historic District 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. For major works, no certificate of appropriateness shall be issued unless the Historic Preservation 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 for major works. 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. If the work is a minor work that is approved by staff, the matter is closed at that level. If it is a major work, it will receive an evidentiary hearing concerning the 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 Superior Court (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. 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.