



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 June 26, 2023
Date: June 16, 2023

The **Town of Black Mountain Planning Board** will meet on **Monday, June 26, 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 May 11, 2023, and May 22, 2023;
3. Proposed Text Amendment – Conditional Zoning; and
4. UDO Chapter 4, Sections 8.04 and 8.05, Chapter 5, Chapter 6, Chapter 11, Minimum Housing, Multifamily, and Short-Term Rentals.

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

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

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



PUBLIC NOTICE
AVISO PÚBLICO

BLACK MOUNTAIN PLANNING BOARD

REGULAR MEETING
REUNIÓN ORDINARIA

Monday, June 26, 2023, at 6:00 p.m.
Lunes 26 de junio de 2023, a las 6:00 p.m.

The Black Mountain Planning Board will meet for their regular monthly meeting on **Monday, June 26, 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 26 de junio de 2023 a las 6:00 p.m.** en el Ayuntamiento, 160 Midland Avenue, Black Mountain, N. C.

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

Jennifer Tipton
Senior Admin

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

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

Posted to the Town Bulletin Board 06/19/2023

www.townofblackmountain.org



**Planning Board Regular Meeting
June 26, 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 May 11, 2023, as written [or as amended]
To adopt the minutes of May 22, 2023, as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Proposed Text Amendment – Conditional Zoning
- UDO Chapter 4, Sections 8.04 and 8.05, Chapter 5, Chapter 6, Chapter 11, Minimum Housing, Multifamily, and Short-Term Rentals

VI. COMMUNICATION FROM PLANNING BOARD

VII. PUBLIC COMMENT

VIII. COMMUNICATION FROM STAFF

IX. ADJOURNMENT

TOWN OF BLACK MOUNTAIN PLANNING BOARD

The Black Mountain Planning Board held a workshop on Thursday, May 11, 2023, at 6:00 p.m. in the Council Room of Town Hall, 160 Midland Avenue, Black Mountain, N.C. 28711.

I. CALL TO ORDER

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

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

Absent:

Chris Collins, Chair
Lauronda Teeple

Staff:

Jennifer Tipton, Senior Admin
Russell Cate, Planner
Ron Sneed, Town Attorney

The meeting was called to order at 6:00 p.m. and duly constituted and opened for business with a quorum of five (5) members.

II. ADOPTION OF AGENDA

The agenda was adopted by consensus.

III. ADOPTION OF MINUTES

There were no minutes to approve.

IV. NEW BUSINESS

1. Second Review of UDO Chapters 1, 7, 9, and 10

Chapter 1 Review:

- In the purpose section, zoning should be added after regulations and it should reference development and property.

Chapter 7 Review:

- In the purpose section, A and B are redundant to Chapter 1.
- What is private law?
- For vested rights expiration, it was recommended to change the site-specific plan expiration from seven years to two years.
- Under floodplain administrator, it is recommended that FIRM be spelled out in C and abbreviated in D.
- For vested rights, under G – Substantial Commencement, it is recommended that wording be added to cover forces beyond the contractor's control.
- The lettering in 7.02.09 is incorrect.

Planning Board Workshop
May 11, 2023

- Word choice throughout the document regarding capitalization and using UDO rather than ordinance.

Chapter 9 Review:

- In the purpose section, it is recommended to remove D and continue in A.
- In the purpose section, it is recommended that in B, the word had be changed to has.
- Ron Sneed will work on wording for Section 9.01.02 C and D with regards to non-conforming structures being in the non-conforming uses section.
- Also, in F, the board feels that the sentence is unnecessary, but Ron Sneed would like to see the definitions first.
- Section 9.01.03 B2, it is recommended to add manufactured in front of park. Ron Sneed did point out that there is a difference between a manufactured home and a mobile home, so we may want to wait to see the definitions because we may want to have two types of parks.
- Regarding replacement of manufactured homes, it is recommended that unoccupied be changed to abandoned and both unoccupied and abandoned be defined.
- Section 9.01.04 for moving signs, it is recommended that “move” be changed to “moved”.
- It is recommended to combine items B and K regarding sign illumination.
- It is recommended that for sign conformance, change of business be changed to change of use.

Chapter 10 Review:

- Should code, article, and section be the same?
- Ron Sneed said that the police powers are what allow emergency entry to structures.
- It is recommended to change staff to Planning Director or his/her designee.

V. OLD BUSINESS

None.

VI. PUBLIC COMMENT

None.

VII. COMMUNICATION FROM PLANNING BOARD

Rick Earley asked the board to think about UR-8 allowing sixteen units per acre (if you have duplexes or a primary and secondary structure) and TR-4 allowing eight units per acre and if that is consistent with and supports the goal of maintaining small town character that is in the comprehensive plan and the beginning of the UDO. Ron Sneed spoke briefly about downzoning and taking away property rights and that the only way you can downzone is with the consent of every property owner in that district or area. Mr. Earley said he was thinking more about changing lot sizes and setback requirements. Chas Fitzgerald expressed his dismay about all of the trees that are being cut down to make room for development.

VIII. COMMUNICATION FROM STAFF

None.

Planning Board Workshop
May 11, 2023

VX. ADJOURNMENT

The meeting was adjourned at 7:52 p.m.

Prepared by:

Chris Collins, Chair

Jennifer Tipton, Senior Admin

TOWN OF BLACK MOUNTAIN PLANNING BOARD

The Black Mountain Planning Board held its regular meeting on Monday, May 22, 2023, at 6:00 p.m. in the Board Room of Town Hall, 160 Midland Avenue, Black Mountain, NC 28711.

I. CALL TO ORDER

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

Chris Collins, Chair
Rick Earley
Kathy Phillips
Chas Fitzgerald

Absent:

Pam Norton, Vice Chair
Joe Laudenslayer
Lauronda Teeple

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 6:03 p.m. and duly constituted and opened for business with a quorum of four (4) members.

II. ADOPTION OF AGENDA

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

III. ADOPTION OF MINUTES

Chas Fitzgerald made a motion to adopt the minutes of March 20, 2023, as written. The motion was seconded by Kathy Phillips and approved by a vote of 4-0.

Chas Fitzgerald made a motion to adopt the minutes of March 27, 2023, as written. The motion was seconded by Rick Earley and approved by a vote of 4-0.

IV. NEW BUSINESS

1. Second Review of Chapters 2, 3, and 8 of the UDO

Chapter 2 Comments:

- Page 32 – remove “four months continuous”
- Page 2 – conditional districts – keep 2.01.03 (c)(2) and delete (c)(1)
- Page 4 – 2.01.04 – organization – items a-g should be under general setbacks
- Page 12 – (i) planning board review after notice has been given
- Page 13 – (m) approval – remove sentence about copy to register of deeds
- Page 12 – (g)(3) add about fees – notice of hearing not refundable
- Page 13 – substantial change #2 – add 10%
- Page 12 – (1)(c) – add trees, floodway, and floodplain
- Page 12 – (g)(1)(h) – new – catch all

Planning Board Regular Meeting

- Page 14 – 2.03.01 (d) add intersection

Chapter 3 Comments:

- page 10 – (d)(d) remove
- page 11 - #4 – upon receipt of order
- page 11 – 5(a) – remove
- page 11 – 8(b) – remove
- page 11 – 8(c) – keep only 1st sentence
- page 11 – #9 – remove last sentence

Chapter 8 Comments:

Ron Sneed had concerns about the meeting types and that they seem to all sound alike. Mr. Sneed will work on comments for this section.

It was noticed that some changes from the first review had not been incorporated. Staff will do a comment bubble by comment bubble review and note changes that have been incorporated and changes that have not been incorporated and send the chapters back to the consultant to make the original changes as well as the new changes.

V. OLD BUSINESS

None.

VI. PUBLIC COMMENT

None.

VII. COMMUNICATION FROM PLANNING BOARD

Chas Fitzgerald asked about examples of site plans for developments, secondary dwelling, accessory dwellings, etc. that would show setbacks and other requirements to show how a site might be built out and is this something that could be put into the UDO. Jessica Trotman said this would be a good handout but not as an example in the UDO.

Rick Earley spoke about consistency with the comprehensive plan in terms of small town character and the amount of dwellings that could be allowed in UR-8 and other zoning districts. Ron Sneed spoke briefly about downzoning and that you have to have the consent of everyone in the area that you are trying to rezone. Mr. Sneed clarified that changing setbacks or lot sizes would constitute downzoning. Jessica Trotman said that this is outside the scope of the project of the UDO and that there are other aspects of the comprehensive plan that support the existing zoning.

VIII. COMMUNICATION FROM STAFF

We will use Encode for the UDO for the foreseeable future but will not use it for the Code of Ordinances.

The date for the workshop will likely be at the next regular meeting on June 26th and we will start early around 3:00 p.m. and will provide food.

Planning Board Regular Meeting

VX. ADJOURNMENT

Prepared by:

, Chair

Jennifer Tipton, Senior Admin

1.9.2 Site-specific vesting plans.

A. The following types of development approvals are site-specific vesting plans for purposes of this section.

1. Any development for which a special use permit is required;
2. Major and minor subdivisions;

~~3. Conditional zoning designation.~~

TOWN OF BLACK MOUNTAIN
PLANNING BOARD
CONSISTENCY STATEMENT

To: Black Mountain Planning Board

From: Planning Staff

Date: June 26, 2023

Subject: Text Amendment

Description: Text Amendment for Vested Rights

Address: N/A

The Planning Board hereby adopts and recommends to Town Council the following statements:

_____ The zoning amendment **is approved and is consistent with the Town's comprehensive plan and is reasonable and in the public interest** because:

How consistent with plan: _____

Why is it reasonable and in the public interest: _____

_____ The zoning amendment **is rejected because it is inconsistent with the Town's comprehensive plan and/or is not reasonable and in the public interest** because:

How inconsistent with the plan: _____

Why is it not reasonable and in the public interest: _____

_____ In addition to approving this zoning amendment, this approval is **also deemed an amendment to the Town's comprehensive plan**. The change in conditions taken into account amending the zoning ordinance to meet the development needs of the community and why this action is reasonable and in the public interest are as follows:



CHAPTER 4: SIGNS, OUTDOOR LIGHTING, AND PUBLIC ART

Contents:

§ 4.05 Signs

§ 4.06 Outdoor Lighting

§ 4.07 Public Art

§ 4.05 Signs

4.05.01 General Provisions

- A. **Intent.** Signs are a necessary and beneficial use of property that contributes to our community's economic vitality and appearance. Reasonable sign regulations are necessary to protect public property and community aesthetics, encourage economic activity, and contribute to the overall appeal of the community. It is the intent of this section to regulate the use, size, layout, style, typography, legibility, and arrangement of signs to ensure that signs are compatible with their surroundings, appropriate to identify individual properties, occupants, and/or the community, and facilitate the safe and orderly flow of pedestrian and vehicular traffic. Specifically, this section is intended to:
1. Promote the public health, safety, and welfare of residents and visitors;
 2. Provide an environment which fosters growth and development of a vibrant business community;
 3. Protect commercial and industrial districts from visual clutter;
 4. Protect property values;
 5. Eliminate distractions which are hazardous to motorists and pedestrians;
 6. Protect and enhance the natural beauty, cultural attributes, distinctive character, and visual environment of the Town of Black Mountain;
 7. Protect the public's ability to identify establishments and premises in an orderly, readable and safe manner;
 8. Protect the public's investment in public buildings, streets, roads, highways, and open spaces; and
 9. Balance the individual rights of property owners to communicate their message with the public's right to be free of unreasonable distractions and aesthetic intrusions.
- B. **Applicability.**
1. No sign visible from the public right-of-way, whether exterior to or interior to a structure, shall be erected, displayed, or substantially altered on any lot zoned or used for non-residential use, except in accord with the provisions of this chapter and until a zoning compliance permit has been issued for the sign.
 2. Pursuant to N.C.G.S. 160D-908, fence wraps displaying signage affixed to perimeter fencing at a construction site are exemption from the requirements of this chapter for up to 24 months or until the certificate of occupancy is issued for the final portion of construction, whichever is shorter. This exemption will not apply to fence wrap that displays advertising other than by a person or company directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required.

3. Recognizing that certain signs and messages are required to be displayed by federal or state law or regulation, and further recognizing the many benefits of certain commonly occurring signage that promote local economic activity, civic events and political discourse, many of which are of a temporary nature, the following types of signage are allowed in any district without need for obtaining a permit, provided that the specific requirements listed below, if any, are met:
- a. Any sign required by law, including emergency, safety, warning or traffic signs or any sign installed by, at the direction of, or with the approval of a governmental authority.
 - b. Signs bearing only property identification numbers and names, post office box numbers, names of occupants of the premises on which the sign is located, provided that:
 - i. The sign is not illuminated and does not exceed two square feet in area per display surface, and
 - ii. No more than two such signs are displayed on the zoning lot.
 - c. Flags having a total area of less than 24 square feet.
 - d. Signs erected and maintained by public agencies and governmental bodies.
 - e. Historical markers erected or placed by a historical nonprofit corporation or governmental authority.
 - f. Signs directing and guiding traffic and parking on private property on which the signs are located, provided that such signs:
 - i. Are not illuminated,
 - ii. Bear no advertising, and
 - iii. Do not exceed four square feet in area per display surface.
 - g. Construction site identification signs whose message is limited to the project or building name, identification of architects, engineers, contractors, lenders and other individuals or firms involved with the construction, the intended purpose of the building and the expected completion date, provided that such signs:
 - i. May not exceed four square feet in area per display surface and six feet in height for single-family or duplex construction;
 - ii. May not exceed 32 square feet in area per display surface and eight feet in height for multifamily or non-residential construction;
 - iii. Such signs shall not be illuminated;
 - iv. No more than one such sign shall be allowed per construction site;
 - v. No such sign shall be erected prior to issuance of a building permit for the site; and
 - vi. Such sign must be removed within seven days of the issuance of a certificate of occupancy.
 - h. Real estate signs advertising the sale, rental, or lease of the premises, provided that such signs:
 - i. Do not exceed one sign per street frontage and four square feet in area per display surface for property zoned residential; and
 - ii. Do not exceed one sign per street frontage and 16 square feet per display surface for property zoned non-residential or located within an approved planned development; and
 - iii. Such signs shall not be illuminated.
 - i. Residential property management sign permanently affixed to the building façade, which includes contact information for the management company, provided that such signs:

- i. Do not exceed one sign per building façade and four square feet in area per display surface; and
 - ii. Are attached to a residential structure with seven or fewer dwelling units.
- j. Temporary political signs, provided that such signs:
 - i. Do not exceed four square feet in area per display surface;
 - ii. Are located on private property or within a public right of way;
 - iii. When placed within a public right-of-way, must comply with the following additional requirements:
 - (A) May not be placed more than 30 days before the beginning of early voting pursuant to N.C. Gen. Stat. § 163-227.2;
 - (B) The candidate must obtain the permission of any property owner of a residence, business, or religious institution fronting the right-of-way where the sign would be placed;
 - (C) No sign is permitted within the right-of-way of a fully controlled access highway;
 - (D) No sign may obscure motorist visibility at an intersection;
 - (E) No sign may be greater than 42 inches in height above the edge of the pavement of the road;
 - (F) No sign may be larger than 18 by 24 inches;
 - (G) No sign may obscure or replace another sign.
 - iv. Are removed within ten days following the primary or general election, as applicable;
- k. Signs announcing sales, provided that such signs:
 - i. Do not exceed one sign per site of the sale;
 - ii. Do not exceed four square feet in area per display surface; and
 - iii. Are removed within seven days of posting.
- l. Announcements by public or nonprofit organizations of special events or activities of interest to the general public, provided such signs:
 - i. Do not exceed one sign per site of such events or activities; and
 - ii. Do not exceed 12 square feet in area per display surface; and
 - iii. Are removed within 14 days of posting.
- m. Information kiosks or bulletin boards erected by or on behalf of a governmental body on public property or rights-of-way in the town business districts for the display of handbills or posters of community interest, provided such kiosks or bulletin boards:
 - i. Contain no more than six square feet in area per sign display surface and a maximum of 72 square feet per kiosk or bulletin board.
- n. A sign held by or attached to a human, located in front of the business, during business hours, for the purposes of advertising or otherwise drawing attention to an individual, business, commodity, service or product. This may also include a person dressed in costume for the purpose of advertising or drawing attention to an individual, business, commodity, service or product.
- o. Signs on registered, licensed vehicles that are parked in a manner that serves the purpose of advertising a business, is generally located in front of the business, and is parked in a standard size parking space.

- p. Signs stating that a business (other than a home occupation) is open, provided that there is no more than one such sign per business establishment, any illumination is steady (does not blink or flash), and the sign does not exceed two square feet in display area.
- C. **Content Neutral.** This Section regulates only the sign structure and physical parameters, and not the content of the sign.
- D. **General Standards.**
 - 1. *Location.* Except where expressly exempted in this Section, all signs must be located on the same lot as the permitted use and be clearly incidental, customary and commonly associated with the operation of the permitted use.
 - 2. *Cessation or vacation of use.* When the use or establishment to which a sign is related ceases or is vacated, any sign, including all of its supports, frames and hardware, must be removed within four months of the cessation or vacating of the use or establishment unless the sign is used by a new use or establishment on the premises in conformance with all current regulations of this chapter.
 - 3. *Signs in the right-of-way.*
 - a. Signs must not encroach into the public right-of-way unless expressly allowed in this Chapter.
 - b. Wall signs, awning signs, canopy signs, projecting signs, crown signs and shingle signs may encroach over the public sidewalk but must not encroach on or over any streets or alleys. All signs must be a minimum of 24 inches inside the curb line or edge of pavement, whichever is greater.
 - c. No sign may be attached, affixed, or painted on any utility pole, light fixture, tree, rock or other natural object within the right-of-way.
 - 4. *Unified Sign Plan.*
 - a. Where a zoning lot contains more than three principal uses or establishments, the provisions of this Section apply to the zoning lot as a whole, and the owners of the zoning lot are responsible for allocating permitted signs and display surface area among the individual uses or establishments.
 - b. A unified sign plan is an overall plan for placement and design of multiple signs for a building or group of buildings on a zoning lot.
 - c. The unified sign plan submitted for a zoning lot must show all signs located or proposed on the zoning lot.
 - d. The unified sign plan must display harmony and consistency with regard to number and size of signs, placement of signs, materials and color, size and style of lettering, and type of sign illumination.
 - e. Unified sign plans are not required in central business or mixed-use zoning districts.
 - 5. *Address on ground signs.* The street address number must be included on all ground signs. Numerals must be at least nine inches in height. The area of the address is not included in any calculation of total sign area.
 - 6. *Pre-existing, nonconforming signage.* Any sign in place prior to adoption of this ordinance that does not comply with the standards of this chapter for size, location, height or sign type is considered a pre-existing, nonconforming sign that may be continued, maintained, repaired, or replaced if damaged or destroyed, provided that the nonconformity is not in any way enlarged or intensified.
 - a. Any advertising sign or business identification sign which is not specifically prohibited and is permanently affixed to a building, structure or the ground, which is nonconforming because of its height, size, setback or location shall be allowed to continue and shall be maintained as provided for in the preceding sections, but shall not be:

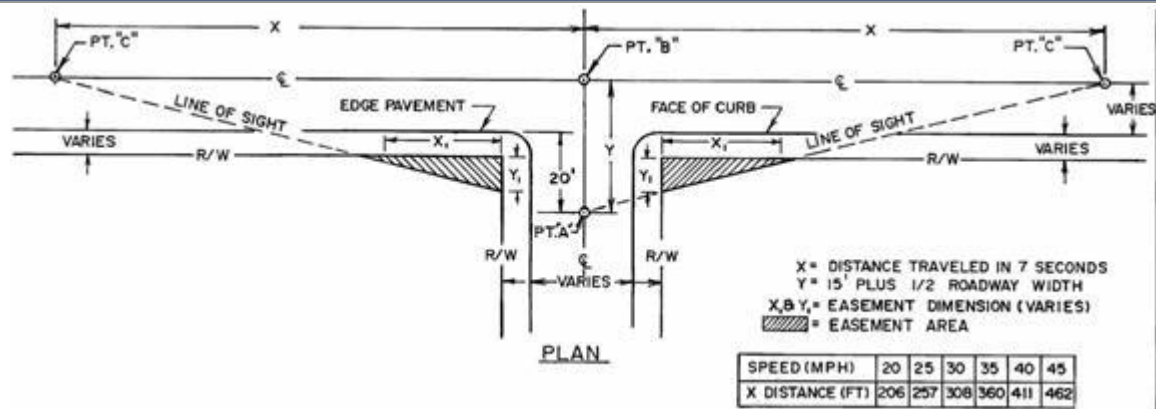
- i. Replaced with another nonconforming sign;
- ii. Structurally altered (except to meet safety requirements);
- iii. Altered so as to increase the degree of non-conformity of the sign;
- iv. Expanded;
- v. Re-established after its discontinuance for 60 days;
- vi. Continued in use after cessation or change of the business or activity to which the sign pertains; or
- vii. Re-established after deterioration, damage, destruction or voluntary demolition if the cost of reconstruction exceeds 60 percent of the replacement cost of a sign of comparable quality.

4.05.02 Prohibited Sign Types, Materials, Design Elements, and Locations

- A. **Generally.** This Section identifies sign types, materials, design elements, and locations that are prohibited in the Town.
- B. **Prohibited Sign Types.** Unless specifically authorized by another section of this Chapter, or by other law, the following sign types are prohibited at all times and in all zones:
 - 1. *Moving signs.* Animated, rotating, or other moving or apparently moving signs, including vehicular billboards.
 - 2. *Digital changeable copy.* Digital changeable copy that scrolls, blinks, or flashes, including but not limited to LCD, LED and any similar technology, except as used to display time and temperature or gas price.
 - 3. *Traffic safety precautions.* Notwithstanding any other provision in this Chapter, the following restrictions shall apply to signs in order to preserve the safety of pedestrian, bicycle, and vehicular movement:
 - a. No sign may make use of the words "STOP", "SLOW", "CAUTION", "DANGER", or any other word, phrase, symbol or character in such manner as is reasonably likely to be confused with traffic directional and regulatory signs.
 - b. Except as used to display time and temperature, no sign may contain flashing lights.
 - c. No sign, or part of a sign, may be located within a sight distance area established below in Figure 4.05.02.
 - d. No sign may be erected so that by its location, color, nature or message it is likely to be confused with or obstruct the view of traffic signals or signs, or is likely to be confused with the warning lights of an emergency or public safety vehicle.
 - 4. *Signs Blocking Safety Measures.* Any sign located in such a way as to intentionally deny an adjoining property owner visual access to an existing sign;
- C. **Prohibited Design Elements.** The following design elements, regardless of sign type, are prohibited:
 - 1. *Traffic Hazards.* Signs that interfere with, obstruct the view of, or may be confused with any authorized traffic sign, signal, or device because of its position, shape, or color as described above;
 - 2. *Safety or Health.* Signs that constitute a hazard to safety or health by reason of inadequate design, construction, repair, or maintenance;
 - 3. *Glare.* Signs that are illuminated with lights that cause a glare into or upon surrounding property or that distract operators of vehicles or pedestrians on a public right-of-way;
 - 4. *Lighting.* Signs that contain reflectors, lights, or illuminations that flash, move, rotate, scintillate, blink, flicker, vary in intensity or color, or use intermittent electrical pulsation;
 - 5. *Indecent or Obscene.* Signs, including but not limited to flags, shall not have:

- a. Text or graphics of an indecent or immoral nature that is harmful to minors under state or federal law;
 - b. Text or graphics that advertise unlawful activity; or
 - c. Text or graphics that are obscene, fighting words, defamation, incitement to imminent lawless action, or true threats.
 6. *Moving Parts*. Except for changeable copy signs that otherwise comply with the requirements of this Section, signs that have visible moving, revolving, or rotating parts or visible mechanical movement of any kind, achieved by electrical or mechanical means;
 7. *Nuisance*. Sound, smoke, heat, or odor emitters;
 8. *Back-lit Awnings*. Awnings that are back-lit and/or made of plastic or vinyl, excluding substitute materials;
 9. *Unfinished Wood*. Unfinished wood support structures, except that stake signs may use unfinished stakes; and
 10. *Bare or Flashing Lights*. Bare light bulbs and flashing lights, except on holiday displays which are exempted from regulation.
- D. **Prohibited Sign Locations**. A sign, regardless of sign type, is prohibited from being in the following locations:
1. *Closed Businesses*. Signs that advertise a business or product that is no longer in existence;
 2. *Blocked Ingress or Egress*. Signs that prevent free ingress to or egress from any door, window, or fire escape;
 3. *Outdoor Amenities*. Signs attached to or located upon outdoor exposed amenities such as trees, street signs, or utility poles that are visible from any street;
 4. *Vehicles*. Signs that are painted on or attached to a motor vehicle unless:
 - a. The vehicle is operable and has current registration and tags;
 - b. The sign is an on-premise sign;
 - c. The vehicle is legally parked within a parking space; and
 - d. The display of the sign is incidental to the vehicle use.
 5. *Semis and Storage*. Signs that are painted on or attached to semi-trailers, shipping containers, or portable storage units except for the brand name of the semi-trailer, container, storage unit.

Figure 4.05.02 Sight Distance Area



4.05.03 Permanent Signs

- A. **Generally.** This Section shall govern regulations for signs permanently installed on a site and which are required to obtain a sign permit:
 1. The attached and freestanding sign types allowed in each zoning district;
 2. The standards that apply to each sign type; and
 3. Whether a sign permit is required or not.
- B. **Unlisted Signs.** Signs that are not listed are prohibited as permanent signs.
- C. **Sign Types per District.**

Sign Type	CR-1, SR-2, TR-4, UR-8, NM U-8	CB, H B-8	O I-6, LI-8, H I-0	Sign Area Allocation (max)	Sign Example
Wall Sign				Maximum 5% of the building facade up to and including the fourth floor, for all of these sign types combined. No individual sign shall exceed 250 sq. ft. in area	

Awning Sign



P P

Maximum 5% of the building facade up to and including the fourth floor, for all of these sign types combined. No individual sign shall exceed 250 sq. ft. in area



Canopy Sign



P P

Maximum 5% of the building facade up to and including the fourth floor, for all of these sign types combined. No individual sign shall exceed 250 sq. ft. in area



Projecting Sign



P P

Based on district parameters in details below.



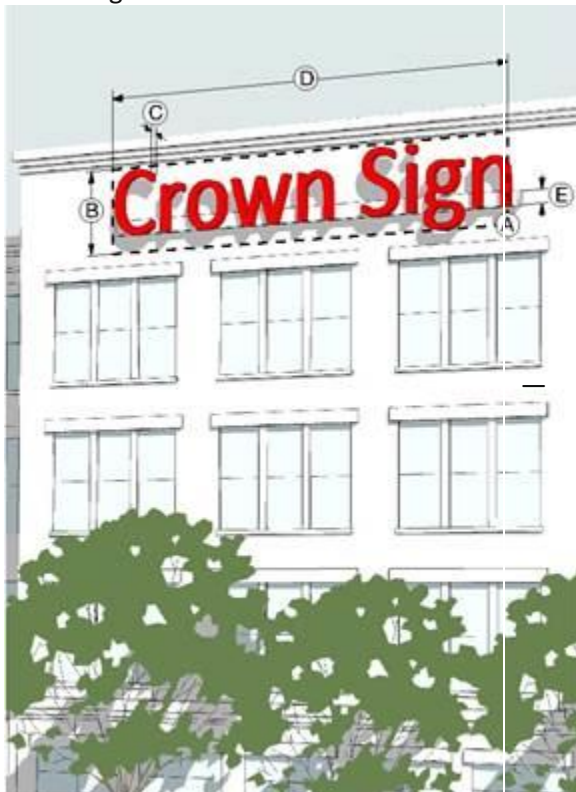
Shingle Sign



P P 9 sq ft



Crown Sign



P P 250 sq ft



Commercial Center Sign



P* P
Based on
district
parameters
in details
below.



Ground Sign



P

P

Based on district parameters in details below.



Cantilevered Ground Sign



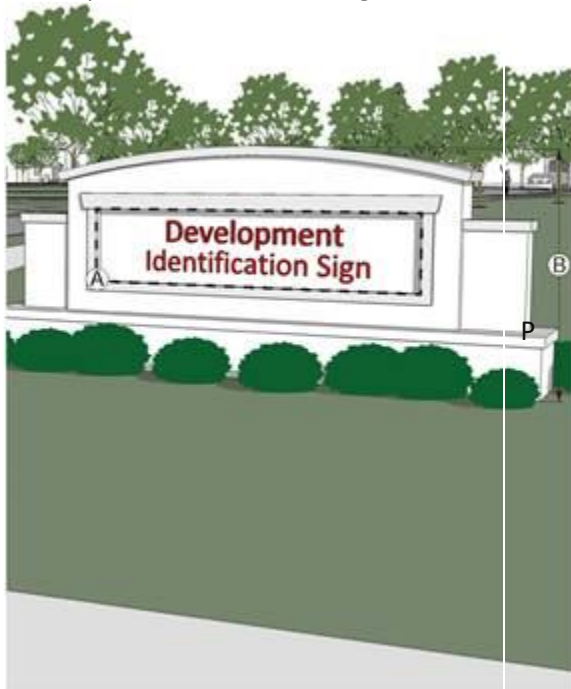
P

P

Based on district parameters in details below.



Development Identification Sign



P*
*

P

Based on
district
parameters
in details
below.



KEY: P = Sign type permitted

P* = For allowed nonresidential uses only

P** = For residential identification sign only

— = Not Permitted

D. Sign Descriptions and Allowances.

1. Wall Sign.

- a. Description. A wall sign is a sign attached to or painted on a wall or building, with the exposed display surface of the sign in a plane parallel to the plane of the wall to which it is attached or painted, including signs affixed to or otherwise displayed on or through a facade window.
- b. Standards.
 - i. No portion of a wall sign may extend above the roof line or above a parapet wall of a building with a flat roof. No portion may extend above the lower eave line of a building with a pitched roof. The sign must not cover windows or architectural details.
 - ii. Wall sign area includes signs visible from the outside that are located inside the building within five feet of the window.
 - iii. For a cinema or theater, may be constructed as a marquee that extends less than ten feet from the building and is at least ten feet above the sidewalk (or finished grade where there is no sidewalk). May be externally or internally illuminated.
- c. Number of Signs.
 - i. In the UR-8, TR-4, CR-1, SR-2, NMU-8 districts, maximum one wall sign per street frontage.

- ii. In all other districts, maximum of three wall signs per individual establishment per street frontage. Window signage shall not be counted towards the maximum number of wall signs.

d. Dimensions.

Dimensions				
		CB, HB-8, TND	UR-8, TR-4, CR-1, SR2, NMU-8	HI-0, OI-6, LI-8, ICD
Ⓐ	Display surface, building identification (max)	16 SF	limited by 5.14.7	40 SF
Ⓑ	Display surface, each establishment (max)	—	—	15 SF
Ⓒ	Projection from building facade (max)	12"	12"	12"
Ⓓ	Raceway (max % of letter height)	35%	35%	35%
Ⓔ	Height (max)	54'	54'	54'
Ⓕ	% of each window area (max)	15%	15%	15%

2. *Awning Sign.*

- a. Description. A sign where graphics or symbols are painted, sewn, or otherwise adhered to the awning material as an integrated part of the awning itself.
- b. Standards.
 - i. Sign must not extend outside the awning.
 - ii. Signs are permitted on the sloping face of the awning.
 - iii. Not allowed above the ground story.
 - iv. May only be externally illuminated in accordance with 4.05.08.
- c. Number of Signs.
 - i. A maximum of one sign per front, side, or sloping valance.
 - ii. Awning sign may be on either:
 - (A) The front side; or
 - (B) The sloping valance.
- d. Dimensions.

Dimensions		
Ⓐ	Display surface (max)	Limited by 5.14.7
Ⓑ	Width (max % of awning width/depth)	75%
Ⓒ	Height of message (max. on front or side; no limit on height on sloping valance)	12"
Ⓓ	Clearance height above sidewalk (min)	10'

3. *Canopy Sign.*

- a. Description. A sign placed at the front edge of a canopy so that the display surface is parallel to the plane of the front building facade or parallel to the plane of the canopy.
- b. Standards.
 - i. Must not extend outside the overall length or width of the canopy, however, may extend above or below the canopy, provided the clear height is met.

- ii. Raceways are permitted for signs extending below or above the canopy. Otherwise, raceways are not permitted and the sign must be flush with the canopy face.
- iii. May be externally or internally illuminated in accordance with section 4.05.08.
- c. Number of Signs. A maximum of one sign is permitted per canopy.
- d. Dimensions.

Dimensions		
Ⓐ	Width (max % of canopy width)	75%
Ⓑ	Height of text and graphics (max)	2'
Ⓒ	Depth (max)	1'
Ⓓ	Raceway (max % of letter height)	35%
Ⓔ	Clear height above sidewalk, canopy and sign (min)	10'

4. Projecting Sign.

- a. Description. A sign applied to or mounted to the wall or surface of a building or structure, with a display surface that projects 12 inches or more from the outside wall of the building or structure.
- b. Standards.
 - i. May be erected on a building corner when the building corner adjoins the intersection of two streets. Allocation allowed per section 5.14.7, of sign area from both frontages may be used for a corner projecting sign, provided it does not exceed the allowed height and width.
 - ii. No portion may extend above the roof line or above a parapet wall of a building with a flat roof. No portion may extend above the lower eave line of a building with a pitched roof.
 - iii. May be externally or internally illuminated in accordance with 4.05.08.
- c. Number of Signs.
 - i. Maximum one projecting sign per individual establishment per street frontage.
 - ii. Must be located at least 25 feet from any other projecting sign or shingle sign.
 - iii. Not allowed on a zoning lot with a commercial center or ground sign, unless signs are located on different street frontages.
- d. Dimensions.

Dimensions		
Ⓐ	Height (max)	
	Mounted below 2nd floor	4'
	Mounted between 2nd and 3rd floor	8'
	Mounted between 3rd and 4th floor	12'
Ⓑ	Distance from building facade (max)	2'
Ⓒ	Projection width (max)	4'
Ⓓ	Depth (max)	12"
Ⓔ	Clearance height above sidewalk (min)	10'

5. Shingle Sign.

- a. Description. A small projecting sign that hangs from a bracket or support and is located over or near a building entrance.

b. Standards.

- i. Must be located within five feet of an accessible building entrance.
- ii. Hanging bracket must be an integral part of design.
- iii. Must be located below the window sills of the 2nd story on a multi-story building or below the roof line on a one-story building.
- iv. May be externally or internally illuminated in accordance with [4.05.08](#).

c. Number of Signs.

- i. Maximum of one shingle sign or projecting sign per individual establishment per street frontage.
- ii. A shingle sign must be located at least 25 feet from any other shingle sign or projecting sign.

d. Dimensions.

Dimensions		
(A)	Display surface (max)	9 SF
(B)	Height (max)	3'
(C)	Spacing from building facade (min/max)	6"/12"
(D)	Projection width (max)	3'
(E)	Depth (max)	6"
(F)	Clear height above sidewalk (min)	10'

6. Crown Sign.

- a. Description. A wall sign extending not more than 3 feet from the building facade located on the upper horizontal band of a building at least 55 feet and 4 stories in height.

b. Standards.

- i. Only permitted on buildings at least 55 feet and four stories in height.
- ii. Must not be placed below the start of highest floor or extend above the roof line.
- iii. Must not cover windows or architectural details.
- iv. May only be internally illuminated in accordance with [4.05.08](#).

c. Number of Signs.

- i. No more than one sign per building facade and no more than two signs per building.
- ii. No more than one tenant or building may be identified on the sign per building facade.

d. Dimensions.

Dimensions		
(A)	Display surface (max)	250 SF
(B)	Height (max)	6'
(C)	Projection - measured from building facade (max)	3'
(D)	Width (max % of facade width)	75%
(E)	Raceway (max % of letter height)	25%

7. Development Identification Sign.

- a. Description. A permanently affixed sign which is wholly independent of a building for support attached along its entire width to a continuous pedestal that is used to identify entry to a development.
- b. Standards.
 - i. Signs taller than six feet must be set back at least ten feet from the front property line and 15 feet from a side property line.
 - ii. Must not conflict with any clear sight triangle.
 - iii. Must be constructed of brick, stone, wood, metal or glass.
 - iv. May contain the name and logo of the development and one anchor tenant.
 - v. May be externally or internally illuminated in accordance with [4.05.08](#).
- c. Number of Signs. In all other districts, two development identification signs are allowed per primary entrance, one on each side.
- d. Dimensions.

<i>Dimensions</i>				
		<i>CB, HB-8, TND</i>	<i>UR-8, TR-4, CR-1, SR2, NMU-8</i>	<i>HI-0, OI-6, LI-8, ICD</i>
(A)	Sign area (max, single side only)	16 SF	20 SF	40 SF
(B)	Sign area (max each, if two sides)	8 SF	—	20 SF
(C)	Sign area (max, for development with a cinema, single side only)	—	—	80 SF
(D)	Height (max)	6'	6'	8'

8. Commercial Center Sign.

- a. Description. A commercial center sign is a free-standing sign attached to a contiguous structural base or planter box permanently affixed to the ground. Commercial center signs do not include free-standing signs supported by poles.
- b. Standards.
 - i. Allowed for commercial centers, defined as a center with a minimum of four retail business tenants and 8,000 SF of retail business floor area.
 - ii. The commercial center must have 100 feet of street frontage minimum. Street frontage for a zoning lot includes frontage on streets that are part of an approved master land use plan or special use permit and have speed limits of 35 mph or greater.
 - iii. Sign must be located at least 250 feet from any other commercial center ground sign.
 - iv. Minimum 9" letter height for all text.
 - v. The display surface area of the sign must be divided into individual tenant name panels. The panels within the display area may be of two different sizes and must be of a similar shape.
 - vi. May be externally or internally illuminated in accordance with [4.05.08](#).
 - vii. Illumination of the sign is not permitted during non-business hours.
- c. Number of Signs. Maximum one commercial center sign per street frontage per commercial center.
- d. Dimensions.

- i. A dimensional deviation of 12 inches or less may be applied to the commercial center sign dimensional standards, provided the resulting sign does not exceed the maximum height and maximum display area standards.
- ii. For signs located at the edge of the right-of-way, the overall height of the base of a sign located along a roadway with a speed limit of 45 mph may be increased by one inch for every two feet the sign is set back from the edge of the closest travel lane. The overall height of the sign may not be increased beyond the maximum height limit by more than three feet.

Dimensions			
		CB, HB-8, TND, HI-0, OI-6, LI-8, ICD	
		Street up to 35 MPH	Street 35 MPH +
Ⓐ	Sign structure plus display surface (max)	120 SF	144 SF
Ⓑ	Display surface only (max)	50 SF	72 SF
Ⓒ	Height (max)	12'	14'
Ⓓ	Width (max)	10'	10'
Ⓔ	Thickness (max)	12"	12"

9. Ground Sign.

- a. Description. A ground sign is a free-standing sign attached to a contiguous structural base or planter box the same width or greater than the message portion of the sign, permanently affixed to the ground. Ground signs do not include free-standing signs supported by poles.
- b. Standards.
 - i. The commercial developments must have a minimum 100 feet of street frontage to qualify for a ground sign (for smaller lots, see cantilevered ground sign). Lot must be accessible by automobile and contain off-street parking for the principal use.
 - ii. Buildings housing principal uses must be located at least 20 feet back from abutting right-of-way.
 - iii. Sign must be set back at least ten feet from the front property line and 15 feet from a side property line.
 - iv. Sign must be located at least 100 feet from any other ground sign.
 - v. Minimum 9" letter height for all text.
 - vi. May be externally or internally illuminated in accordance with [4.05.08](#).
- c. Number of Signs.
 - i. In the UR-8, TR-4, CR-1, SR-2, NMU-8 Districts, maximum one ground sign per lot.
 - ii. In all other districts, maximum one ground sign per street frontage.
 - iii. No ground sign is permitted on the same zoning lot with a projecting sign, unless signs are located on different street frontages.

d. Dimensions.

<i>Dimensions</i>				
		<i>UR-8, TR-4, CR-1, SR-2, NMU-8</i>	<i>CB</i>	<i>All Other Districts</i>
(A)	Display surface (max)*	16 SF	8 SF	15 to 30 SF**
(B)	Height (max)	6'	8'	8'
(C)	Width (max)	10'	10'	10'
(D)	Thickness (max)	12"	12"	12"
* Area associated with the text of a building name or address is exempt from maximum display surface calculation.				
* Display surface max. is per display area.				

10. Cantilevered Ground Sign.

- a. Description. A permanently affixed sign which is wholly independent of a building for support where the primary support is supplied by a post and the sign hangs from a bracket or support.
- b. Standards.
 - i. No minimum street frontage required.
 - ii. Buildings housing principal uses must be located at least 20 feet back from abutting right-of-way.
 - iii. Must be set back at least five feet from the front lot line and five feet from a side lot line.
 - iv. Hanging bracket must be an integral part of design.
 - v. Sign must be located at least 25 feet from any other ground sign.
 - vi. May be externally or internally illuminated in accordance with 4.05.08.
- c. Number of Signs.
 - i. One cantilevered ground sign per street frontage.
 - ii. No cantilevered ground sign permitted on same zoning lot as a projecting sign.
- d. Dimensions.

<i>Dimensions</i>		
(A)	Display surface (max)	9 SF
(B)	Support height (max)	10'
(C)	Sign height (max)	6'
(D)	Display surface height, width (max)	3'

4.05.04 Specialty Sign Types

- A. **Sidewalk Sign.** A sidewalk sign is a movable sign not secured or attached to the ground or surface upon which it is located. This sign type is typically an A-frame or spring-mounted sign. See Figure 4.05.04.
 1. A sidewalk sign is permitted in the central business district and highway business.
 2. A sidewalk sign must be no more than 42" tall and 36" wide. The sign face must be no more than six square feet in area.

3. There may be no more than one sidewalk sign per tenant, generally located adjacent to the primary facade in front of the business.
4. A sidewalk sign must not obstruct vehicular, bicycle or pedestrian traffic, and must comply with ADA clearance and accessibility requirements.
5. The sign must be removed and placed indoors at the close of each business day.
6. No illumination is permitted.

Figure 4.05.04. Sidewalk Sign Example



B. Parking Lot Identification Banners.

1. Each parking lot identification banner must not exceed four square feet in display area, and must be limited to the name of the building or development.
2. One or two banners may be approved for display from each streetlight.
3. The colors, shape, materials, appearance and duration of display for such banners must be approved by the town manager.

C. Gas Station Signage.

1. *Pumps.* Signs located on the top of gas pumps (pump toppers) must comply with the following standards:
 - a. Gas stations may install one pump topper per pump.
 - b. Pump toppers are limited to a maximum of six square feet per side and no more than two sides per pump.
 - c. The base of the pump must be a neutral color, and must not contain any signage.
 - d. No internal illumination of the pump or pump topper is allowed.
2. *Canopies.* Gas station canopy signs must comply with the following standards:

- a. The sign must be an integral component of the pump canopy (composed of lettering mounted, painted or otherwise affixed to the pump canopy, and not located on the top or bottom of the canopy).
 - b. The features, materials, colors and designs used in the pump canopy must be similar to the principal structure. Such features are considered similar where the materials and colors of the canopy are the same as the predominant materials and colors of the principal structure.
 - c. Each canopy sign may not exceed four square feet of display area. The maximum letter height or trademark height must not exceed 18 inches.
 - d. Additional canopy sign area may be permitted by transferring building sign display area. If building sign display area is transferred, one canopy sign is permitted on each side of a canopy, up to a maximum of three sides.
 - e. The canopy must not encroach upon any publicly dedicated rights-of-way.
 - f. No internal canopy illumination is permitted.
3. *Digital Gas Price Display.* Gas prices may be displayed as digital (electronic) changeable copy.

4.05.05 Temporary Signs

- A. **Applicability.** Each property is allowed one of the following types of temporary sign if it is located outside of the Right-of-Way and not obstructing sight triangles at intersections:
 1. Wall banner
 2. Yard banner
- B. **Size, Material, and Aesthetic Requirements.** The size requirements of the allowed types of temporary signs are set forth in Table 4.05.05, *Area for Temporary Signs*.
- C. **Banners.** All banners shall meet the following requirements:
 1. Temporary banners shall be constructed of a material at least 13 oz. vinyl scrim or heavier, or alternatively nine oz. vinyl mesh or heavier material.
 2. All temporary banners shall be professionally printed, hemmed, have grommets on at least the four connective corners, and be mounted on heavy metal stakes when mounted in the yard. Bungee cord or similar material shall be used to attach the sign to the stakes, to maintain tautness of sign.
 3. Temporary banners may be displayed up to four times per calendar year with each display period not exceeding 30 days for a maximum duration of 120 days per calendar year.
 4. Temporary banners shall be removed no later than seven days after the end of the permitted use.
- D. **Maintenance.** All temporary signs may be displayed until they become tattered, faded, ripped, or otherwise dilapidated. At that time, the temporary sign must be removed and/or replaced with a new, professionally manufactured sign.
- E. **Flexibility.** The Administrator may approve additional sign area for special cases of unorthodox shapes and materials if the does not exceed the area designated in Table 4.05.05

Table 4.05.05 Area for Temporary Signs	
Sign Type	Size (<i>maximum</i>)
Wall Banner	32 square feet
Yard Banner	32 square feet

G. Signs Requiring Zoning Permits with No Zoning Fee Assessed.

3. Temporary special events signs or banners for religious, charitable, civic, fraternal, or similar organizations, provided:
 - a. Signs shall be erected no sooner than 14 days prior to an event and removed no later than seven days following an event.
 - b. All signs shall be located on private property except such signs may be located within a street right-of-way subject to Town Council approval.
 - c. Portable signs for such use may be allowed.

H. Temporary Freestanding Signs.

1. Temporary freestanding signs shall not be located within a public street right-of-way or sight triangle and shall not be attached to trees or utility poles or on publicly-owned property. Temporary signs shall not be illuminated except for temporary holiday decorations. Each lot of record within the jurisdiction of the Town of Black Mountain may have up to one (1) temporary sign unless otherwise specified in this Section.
2. Temporary freestanding signs include those listed below. Temporary signs that do not fit into one (1) of the following categories are not permitted:

Real Estate and Construction Signs

Signs that advertise the sale or lease of a property or the construction of a new building.

Max Area:	6 square feet (single-family and two-family residential) 18 square feet (multi-family residential and non-residential)
Max Height:	3 feet (single-family and two-family residential) 6 feet (multi-family residential and non-residential)
Max Number:	1
Min Setback:	Outside of right-of-way

- Shall be removed upon completion of sale, event or feature being promoted
- Shall not interfere with pedestrian or vehicular circulation or sight lines

A-frame Signs

Signs with two sides angled vertically that advertise a special sale, event, or feature that are removed at the close of business each day. This sign type includes changeable grease boards, black boards and white boards.

Max Area:	6 square feet
Max Height:	3 feet tall
Max Number:	1
Min Setback:	Outside of right-of-way

- Shall be removed daily at close of business
- Shall not interfere with pedestrian or vehicular circulation or sight lines

Wire Frame Signs

Two-sided plastic signs on a metal wire frame that affixes to the ground and advertises a special sale, event or feature.

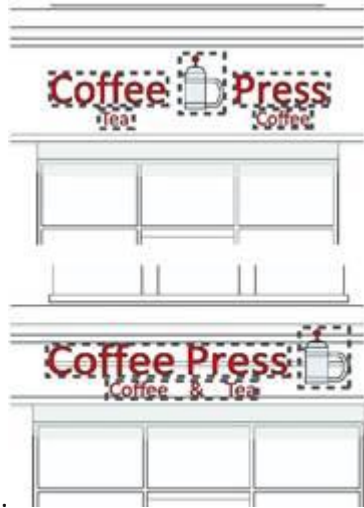
Max Area:	6 square feet
Max Height:	3 feet tall
Max Number:	1

Min Setback:	Outside of right-of-way
- Allowed in SC, AU, MU zoning districts only - Shall be removed daily at close of business - Shall not interfere with pedestrian or vehicular circulation or sight lines	
<u>Feather Flags</u>	
Signs on flexible material that blow in the wind like a flag and resemble the outline of a feather and advertise a business, special sale, event, or feature.	
Max Area:	18 square feet
Max Height:	8 feet
Max Number:	1
Min Setback:	Outside of right-of-way
- Allowed in non-residential districts only. - Shall be removed daily at close of business - Shall not interfere with pedestrian or vehicular circulation or sight lines	
<u>Fundraiser Signs</u>	
Signs identifying or promoting fundraising campaigns or events for tax-exempt, non-profit organizations.	
Max Area:	18 square feet
Max Height:	8 feet
Max Number:	1
Min Setback:	Outside of right-of-way
- Shall not interfere with pedestrian or vehicular circulation or sight lines - Maximum of 30 days per campaign or event	
<u>Yard Sale Signs</u>	
Such signs are placed no more than one (1) prior to the yard sale and are removed a maximum of (1) day after the yard sale.	
Max Area:	6 square feet
Max Height:	3 feet
Max Number:	1
Min Setback:	Outside of right-of-way
- Shall be placed no more than 1 day prior to the yard sale and shall be removed a maximum of 1 day after the yard sale - Shall not interfere with pedestrian or vehicular circulation or sight lines	

4.05.06 Sign Measurements

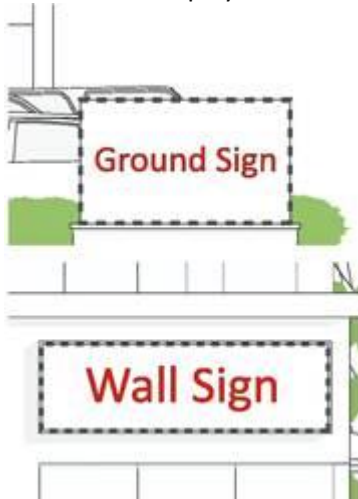
A. **Computation of Sign Area.** The area of all signs is determined as follows:

1. For wall signs, awning signs, canopy signs and crown signs consisting of freestanding letters or logos, sign area is calculated as the total area of the rectangle, circle or square that fully encloses all the letters

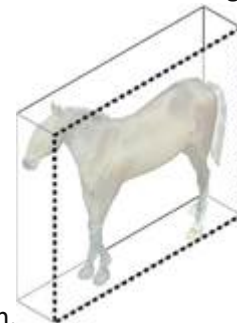


or logo.

2. For signs on a background, the entire area of the background is calculated as sign area, including any material or color forming the sign face and the background used to differentiate the sign from the structure on which it is mounted. Display surface includes the face of the structure that the message is affixed to. Display surface does not include any structural members not bearing advertisement.



3. The sign area of a three-dimensional sign is calculated as total area of the smallest rectangle, circle or



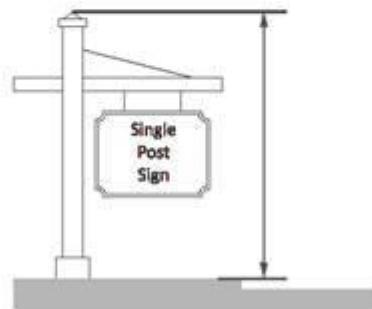
square that fully encloses the largest profile of the three-dimensional sign.

4. The area for a sign with more than one face is calculated by adding the area of all sign faces that are 45 degrees or greater; where the sign face angle is less than 45 degrees only the area of the largest sign



face is computed as part of the sign area.

- B. **Measurement of Sign Height, General.** The total height of a sign is measured from the highest point of the sign or supporting structure to the top of the abutting sidewalk (or the crown of the adjacent roadway where



no sidewalk exists).

- C. **Measurement of Sign Height, Commercial Center Signs.**

1. The height of a commercial center sign is measured from the mean natural grade.
2. Mean natural grade is measured along a line parallel to the street frontage for a distance of 100 feet on either side of the base of the sign, and along a line perpendicular to the street starting at the right-of-way for a distance equal to the width of the proposed sign.
3. Where the proposed location of the sign is below the natural grade of the adjacent street frontage, the overall height of the base of the sign may be increased by up to ten feet in order to achieve the maximum permitted height, as measured from the natural grade of the adjacent street frontage.
4. Landscaping around the base of a sign must be shown on a landscape plan. The landscaping must buffer and screen that portion of the base of the sign located below the natural grade of the adjacent street frontage.
5. The design of the base of the sign must complement the features and frame of the sign.
6. In those situations where compliance with Federal Emergency Management Agency (FEMA) floodplain regulations prohibits the installation of a contiguous structural base, the town manager may approve an alternate base design. Landscaping and screening must be incorporated into the alternate base design.

- D. **Sign Setbacks.** Signs required to be set back are typically measured from the property line. However, in instances where the property line is adjacent to a drainage area or other right-of-way that may reasonably be

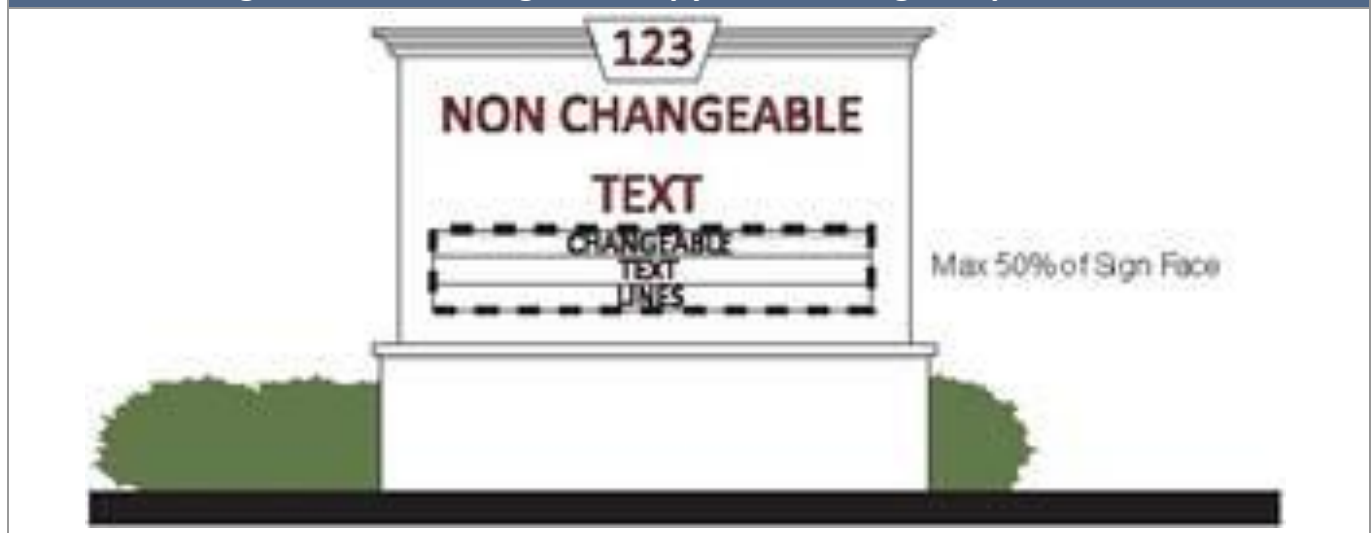
anticipated to exist in the future, the town manager may allow the sign to be placed at the property line without any setback.

- E. **Sign Maintenance.** All signs must be maintained in good condition and present a neat and orderly appearance. Failure by the owner or tenant to remove poorly maintained signs may result in enforcement action by the town. The town manager may cause to be removed (after due notice) any sign which shows gross neglect, becomes dilapidated, or if the ground area around it is not well maintained.

4.05.07 Changeable Copy

- A. **Defined.** A sign or portion of a sign that has a reader board for the display of text information in which each alphanumeric character, graphic or symbol is defined by objects (not consisting of an illumination device) that may be changed or re-arranged manually or mechanically without altering the face or the surface of the sign.
- B. **Where Permitted.** Manual changeable copy is allowed in conjunction with a permitted commercial center sign, ground sign or marquee wall sign only.
- C. **Design Requirements.** The manual changeable copy portion of the sign may be no greater than 50 percent of the total sign area on each display face.
- D. **Permitted Uses.** No electronic or digital changeable copy is allowed, except for digital time and temperature signs and gas price signs at gas stations.

Figure 4.05.07 Changeable Copy Center Design Requirements



4.05.08 Sign Illumination

- A. **Prohibited light sources.** The following light sources are not permitted:
 - 1. Blinking, flashing, chasing or scrolling.
 - 2. Bare bulb illumination that exceed 0.3 foot candles at the property line.
 - 3. Colored lights used in any manner so as to be confused with or construed as traffic control devices.
 - 4. Direct reflected light that creates a hazard to operators of motor vehicles.

- B. Brightness. The light from any illuminated sign must not be of an intensity or brightness that will interfere with the comfort, convenience and general welfare of residents or occupants of adjacent properties. Brightness must not exceed town maximum foot-candle standards.
- C. Internal illumination.
1. Internal illumination is not allowed in the CR-1, NMU, SR-2, UR-8, TR-4 Districts.
 2. Channel letters may be internally lit, halo lit or back-lit.
 3. For internally illuminated signs, the background must be opaque or a substantially darker color than the sign message.
 4. Light emitting diodes (LED)'s are permitted as a light source only where the LED is behind an acrylic, metal or similar sign face and returns in such a manner that the LED modules are not visible from the exterior of the sign.
 5. Internal illumination for shingle and cantilever signs is limited to the text, letter or logo. The background may not be internally or externally illuminated.
 6. The letter or message of internally illuminated signs must consist of non-reflective materials.



External light sources



Internally lit channel letters



Internally lit cabinet signs with darker background

- D. External illumination.
 - 1. Lighting directed toward a sign must be shielded so that it illuminates only the face of the sign and does not shine directly onto public right-of-way or adjacent properties.
 - 2. Flood lights or spotlights near the top of a sign must be focused downward onto the sign. Floodlights or spotlights must be aimed such that the entire beam falls within the intended area of the sign to be lit.
- E. Raceways and transformers.
 - 1. If a raceway is necessary, it must not extend in width or height beyond the area of the sign.
 - 2. Raceways must be finished to match the background wall or canopy, or integrated into the overall design of the sign.
 - 3. Visible transformers are not permitted.

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

4.05.10 Installation and Maintenance

A. Installation.

1. *Supports.* Supports and braces shall be an integral part of the sign design. Angle irons or wires used for supports or braces shall be hidden from public view to the extent technically feasible.
2. *Freestanding Signs.* Freestanding signs shall be self-supporting structures and be permanently attached to sufficient foundations.
3. *Attached Signs.* Attached signs must derive their support from the building to which they are attached.
4. *Use of Fill Under Monument Signs.* Mounds or berms may be used to elevate permanent monument signs, provided that the mound or berm elevates the base of the sign not more than three feet above the natural grade at the location of the sign.
5. *Electrical Switch.* The sign shall be equipped with a switch that prevents electricity from flowing to the sign in order to promote safety during maintenance.
6. *Inspection Request.* After any sign requiring a permit is constructed or erected, the sign contractor performing the work or service shall notify the Building Inspector for final inspection of the sign.

B. Inspection.

The Building Inspector has the right to visit any site where a sign is erected or is being erected, installed, converted, relocated, enlarged, or modified in the Town for the purpose of making any inspection necessary.

C. Sign Plan Required.

For any lot on which the owner proposes to erect one or more signs requiring a permit, the owner shall submit to the Planning Director a Sign Plan containing the following. For a combined development or other multi-tenant development, a Sign Plan is required.

1. *Plot Plan.* An accurate Plot Plan of the lot or parcel, at any scale the Planning Director may reasonably require;
2. *Locations.* Location of buildings, parking lots, driveways, and landscaped areas on the lot or parcel;
3. *Sign Areas.* Computation of the maximum total sign area, the maximum area for individual signs, the height of signs and the number of freestanding signs allowed on the lot(s) or parcel(s) included in the plan under this Chapter; and
4. *Present and Future Signs.* An accurate indication on the plot plan of the proposed location of each present and future sign of any type, whether requiring a permit or not. Incidental signs need not be shown.

D. Sign Area Computations.

The following principles control the computation of sign area and height:

1. *Computation of Area of Single-Faced Signs.* The area of a sign face is computed by means of the smallest square or rectangle that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color-forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, or decorative fence or wall when that fence or wall otherwise meets UDO regulations and is clearly incidental to the display itself. Refer to Figure 4.05.10, *Sign Area and Height*.
2. *Computation of Area of Multi-faced Signs.* The sign area for a sign with more than one face is computed by adding together the area of all sign faces visible from any one point. When two identical sign faces are placed back to back, so that both faces cannot be viewed from any point at the same time, and when the sign faces are part of the same sign structure and not more than 42 inches apart, the sign area is computed by the measurement of one of the faces.
3. *Computation of Overall Height.* The overall height of a sign is computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be either of:
 - a. Existing grade prior to construction; or
 - b. Newly established grade after construction, exclusive of any filling, beaming, mounding, or excavating solely to locate the sign. If the normal grade cannot reasonably be determined, sign height is computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the Principal Structure on the lot or parcel, whichever is lower.

Figure 4.05.10
Sign Area and Height

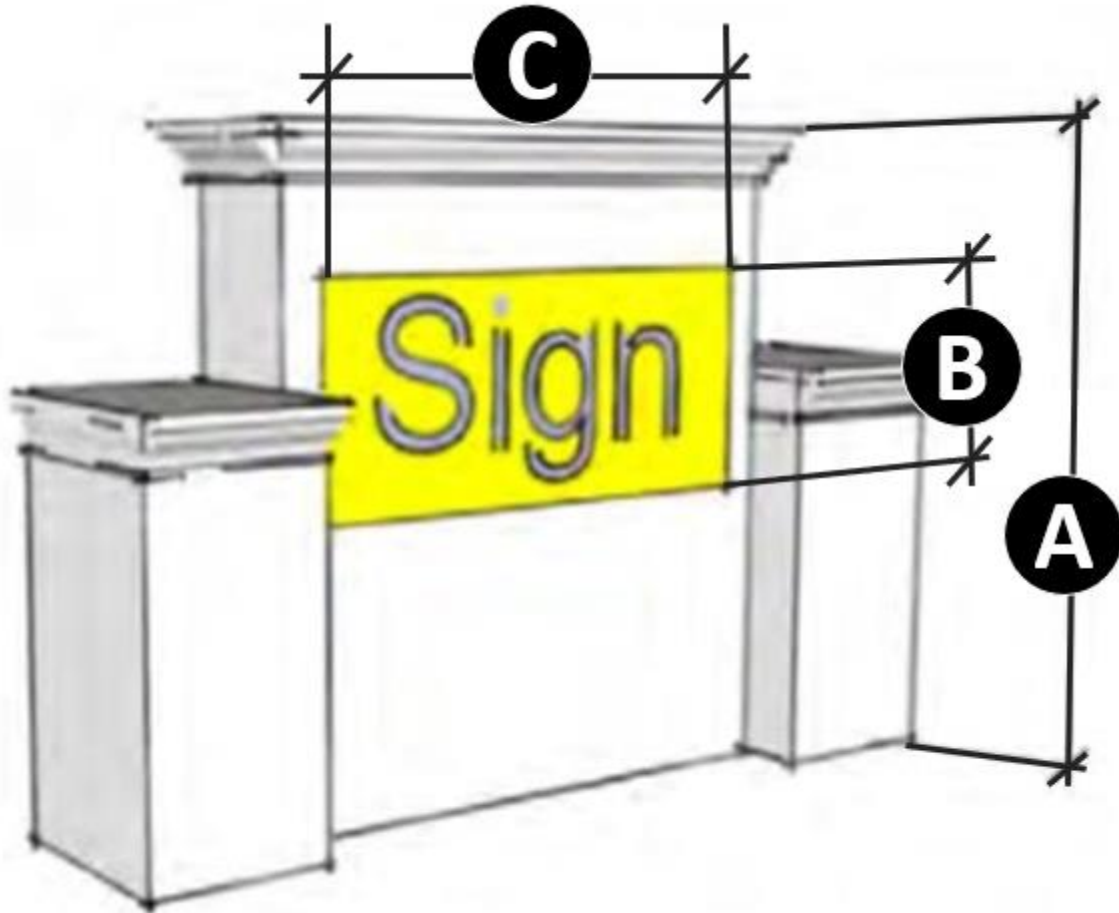


FIGURE NOTES:: A = Sign Overall Height; B = Sign Face Height ; C = Sign Face Width

- E. **Maintenance.** Signs that do not have a permit, or are not maintained as set out in this Section, are subject to the provisions set out in this Subsection.
1. *Message.* Signs shall display messages. Signs that do not display a message for a period of more than 90 days are "abandoned signs," which are prohibited subject to [4.05.02, Prohibited Sign Types, Materials, Design Elements, and Locations](#).
 2. *Upkeep of Ground Around Sign.* The area within a 10-foot radius of the base of a sign shall be kept free of weeds, rubbish, or flammable waste or material.
 3. *Supports and Other Hardware.* Structural supports, braces, bolts, clips, supporting frames and fastenings of a sign shall be kept in good repair and safe condition, including replacement of defective parts, so that the sign is securely fastened or anchored to a building wall, structural framing, or other foundation.

4. *Paint and Finishes.* Paint and other finishes shall be maintained in good condition. Peeling finishes shall be repaired. Signs with running colors shall be repainted, repaired, removed, or replaced if the running colors were not part of the original design.
 5. *Corrosion and Rust.* Permanent signs and sign structures shall be finished and maintained to prevent corrosion and rust. A patina on copper elements is not considered rust.
 6. *Level Position.* Signs that are designed to be level shall be installed and maintained in a level position.
 7. *Materials.* All signs shall be constructed of durable materials and securely attached to framework, with supports made of masonry, wood, metal, or other material of equivalent strength.
- F. **Permit Expirations.** Sign Permits are valid for up to six months. Permits may be renewed prior to the end of the six-month period, if necessary. However, if the permit expires, the original cost of the permit is charged as the renewal fee.
- G. **Cessation or Vacation of Use.** When the use or establishment to which a sign is related ceases or is vacated, any sign, including all of its supports, frames and hardware, must be removed within four months of the cessation or vacating of the use or establishment unless the sign is used by a new use or establishment on the premises in conformance with all current regulations of this chapter.

4.05.11 Enforcement and Penalties

In addition to the remedies provided in chapter 1 of this land use code for violations of the terms of a permit or development approval, the planning director, or the director's designee, may remove any illegally posted sign. Any such removed sign will be retained for seven days, during which period the sign may be retrieved by the owner upon payment of a \$25.00 storage fee. After those seven days and for a second or repeat offense, illegal signs removed by town staff shall be disposed of or destroyed.

§ 4.06 Outdoor Lighting

Outdoor lighting fixtures shall be installed in a manner to protect the street and neighboring properties from direct glare or hazardous interference of any kind. Lighting regulations are otherwise found in Chapter 20 of Article VII of the Town of Black Mountain Code of Ordinances.

§ 4.07 Public Art

4.07.01 Art in Public Places

- A. **Generally.** All art or murals which are on public property or are visible from public property within the Town of Black Mountain must receive prior approval from Town Council. The conservation and the maintenance of the art or mural will be the responsibility of the property owner. Any art or mural that is permitted to deteriorate into a condition of disrepair shall constitute a public nuisance.
- B. **Purpose.** This section furthers the following:
1. Encourages artistic expression;
 2. Fosters a sense of pride in the downtown.
 3. Preserves existing art or murals that are a valued part of the history of the Town.
- C. **Objectives.** These regulations also promote public safety and welfare by regulating such displays in keeping with the following objectives:
1. That the design, construction, installation, repair and maintenance of such displays will not interfere with traffic safety or otherwise endanger public safety.

2. That the regulations will provide reasonable protection to the visual environment by controlling the size, height, spacing and location of such displays.
 3. That the public will enjoy the aesthetic benefits of being able to view such displays in numbers and sizes that are reasonably and appropriately regulated without having to endure visual blight and traffic safety impacts.
- D. **Exclusion of Commercial Messaging.** The Town wishes to encourage the installation of art and murals and, at the same time, prevent the proliferation of off-site commercial signs. Therefore, the Town's regulations exclude commercial advertising on murals. A mural permitted under this ordinance shall be a one-of-a-kind, hand-painted, hand-tiled, or digitally printed image on the exterior wall of a building that does not contain any commercial message. For definition purposes, a commercial message is any message that advertises a business conducted, services rendered, or goods produced or sold.
- E. **Nonconforming Art or Murals.** Any original art or mural installed prior to the effective date of this section shall have legal nonconforming status and, notwithstanding any provision of this ordinance, will not require registration.
- F. **New Art or Mural Requirements.**
1. *Artist Requirements.*
 - a. Surface preparation may include chemical treatments to remove chipping paint, mold and dirt.
 - b. The artist will be required to apply a protective coating once the art or mural is installed.
 - c. The medium used must be durable and able to withstand minor wear and tear and harsh outdoor elements.
 - d. If the art or mural is to contain an artist signature or brand, it must be approved during approval.
 - e. The art or mural will serve as a visual landmark and should be distinctive through use of design color, etc. Only original art will be considered.
 2. *Alterations to a permitted mural.*
 - a. Alterations include any change to a permitted work, including, but not limited to, any change to the image(s), materials, colors or size of the permitted work.
 - b. Alteration does not include naturally occurring changes to the work caused by exposure to the elements or the passage of time.
 - c. Minor changes to the permitted work that result from the maintenance or repair of the work shall not constitute an alteration. Such minor changes may include slight and unintended deviations from the original image, colors, or materials that occur when the permitted work is repaired due to the passage of time or as a result of vandalism.
 3. *Removal.* A work may be removed within the first four years of the date of registration under the following circumstances:
 - a. The property on which the work is located is sold.
 - b. The structure or property is substantially remodeled or altered in a way that precludes continuance of the work.
 - c. The property undergoes a change of use authorized by the Town.



CHAPTER 5: SUBDIVISION STANDARDS

Contents:

- § 5.01 Applicability and Purposes
- § 5.02 Subdivision Design Standards
- § 5.03 Subdivision Types
- § 5.04 Adequate Public Facilities Standards
- § 5.05 Public Improvements Dedication and Acceptance

§ 5.01 Applicability and Purposes

5.01.01 Applicability

- A. **Generally.** This Chapter shall apply to any subdivision within the corporate limits of the Town established pursuant to NCGS. This Chapter sets out regulations for the substantive review of subdivisions of land to serve the needs of all public and private interests within the Town.
- B. **When a Subdivision Plat is Required.**
1. *Subdividing Land.* The owner or proprietor of any tract of land who desires to Subdivide land (to create a "Subdivision") shall be required to submit a plat of such Subdivision to the Director, whom is hereby charged with the responsibility for coordinating the processing of such plats. The subdivision plat submitted to the Director must be made in accordance with the regulations set forth in this Ordinance.
 2. *Subdividing Land without Plat.* No person shall subdivide land without making and recording a plat and complying fully with the provisions of this Ordinance and all other state and local laws and regulations applying to subdivisions.
 3. *Transfer of Ownership.* No person shall sell or transfer ownership of any lot or parcel of land by reference to a plat of a subdivision before such plat has been duly recorded with the Register of Deeds of Buncombe County, unless such subdivision was created prior to the adoption of this Ordinance and any other subdivision ordinance applicable thereto.
 4. *Building Permit or Certificate of Compliance and/or Occupancy.* No building permit or Certificate of Compliance and Occupancy shall be issued, and no construction of any public or private improvements shall be commenced, for any parcel or plat of land which was created by subdivision after the effective date of this UDO in a manner that does not comply with the requirements of this UDO.
 5. *Final Subdivision Plat.* A final subdivision plat shall be approved by the Director before the subdivision of a parcel may be recorded. No land may be subdivided through the use of any legal description other than with reference to a plat approved by the Director in accordance with these regulations.
- C. **When a Subdivision Plat is Not Required.** Pursuant to NCGS §160D-802, a subdivision plat shall not be required for any of the following:
1. *Combination.* The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the Town as shown in this UDO;
 2. *Large Lots.* The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.

3. *Public Acquisition.* The public acquisition by purchase of strips of land for the widening or opening of streets.
 4. *Certain Subdivision.* The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality, as shown in this UDO.
 5. *Wills.* The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under NCGS Chapter 29.
 6. *Court Orders.* In any matter in which a court orders the partition of land by dividing the same among the owners, such action shall be exempt from the provisions of this Ordinance, provided that the Town is made a party defendant to said action and gives its consent or fails to file responsive pleadings to said division of the property.
 7. *Cemeteries.* Division of land for cemetery lots or burial plots.
 8. Division of land to change boundary lines between adjoining property owners where no new right-of-way dedication is involved and changes in lot size and setbacks do not create a nonconformity with the land use code.
 9. Division of land as part of a special use permit. Special use permits are issued by the board of adjustment and governed by an approved master plan in accordance with the regulations provided in chapter 7. In such cases, the special use permit and master plan as approved by the board of adjustment shall be considered as an approved preliminary plat. Special use permits shall otherwise comply with all other town regulations and shall provide such covenants or other legal provisions which will insure conformity to, and achievement of, the plan.
 10. Division of land for the purpose of habitat preservation, protection of ridge tops, surface waters, wetland or other natural features, for the protection of an archeological site, or for the purposes of creating a stormwater management facility, without meeting subdivision standards for lot size, access, or road frontage if the following conditions are met:
 - a. Maintenance responsibility is established with a recognized land trust, the town or other responsible entity;
 - b. The tract is placed in conservation in perpetuity; and
 - c. The town may retain access for the purpose of public safety protection.
- D. **Recordation of Unapproved Plat Prohibited.** The Register of Deeds shall not file or record any subdivision plat required by this UDO until such plat shall have been approved, and such approval evidenced thereon, in accordance with the regulations set forth in this Ordinance.
- E. **Sale of Property in Violation of this Ordinance Prohibited.** No land described in this Section shall be subdivided or sold, or transferred until each of the following conditions has occurred in accordance with these regulations:
1. The subdivider or his agent has submitted a conforming sketch plat of the subdivision to the Director; and the subdivider or his agent has obtained approval of the sketch plat, a preliminary plat (when required), and a final plat as provided in this Ordinance; and
 2. The subdivider or his agent files the final or conveyance plat with the Register of Deeds.

5.01.02 Purposes

- A. **Generally.** This Section sets out regulations for the substantive review of subdivisions to be applied in addition to the other applicable land development regulations of this UDO.

- B. **Purpose.** The purpose of these regulations is to guide the subdivision and development of land for residential, commercial, and industrial purposes in such a manner as to implement the comprehensive plan and to:
1. *Establish adequate and accurate records of land subdivision,*
 2. *Harmoniously relate the development of the various tracts of land to the existing community and facilitate the future development of appropriate adjoining tracts,*
 3. *Provide for adequate, safe, and efficient public utilities and improvements,*
 4. *Enhance and protect native vegetation and developing with sensitivity to the topography and natural beauty of the land,*
 5. *Provide for adequate facilities for public parks, schools, and other public purposes (including, but not limited to, libraries, fire stations, public buildings, and other similar facilities),*
 6. *Provide for light, air, and other spaces for the public,*
 7. *Provide for protection from fire, flood, and other dangers. This includes arrangement of lots, blocks, and streets which afford adequate space for these protections as well as stormwater management.*
 8. *Provide for efficient design of utilities, storm water drainage facilities, and streets and sidewalks,*
 9. *Ensure that the cost of improvements which primarily benefit the parcel proposed for development be borne by the owners/developers of the parcel, and the costs of improvements which primarily benefit the whole community be borne by the whole community,*
 10. *Provide for the administration and regulation of resource protection areas and open spaces as might be articulated by policies in the Comprehensive Plan,*
 11. *Protect groundwater and surface water from contamination by storm water runoff and other sources of pollution, and*
 12. *Reduce potential impacts of new development on street congestion by providing alternative travel routes, provide a meaningful choice of alternative modes of transportation, shorten journey to work trips, or lessen overall vehicle miles traveled. This includes transit and non-motorized transportation.*

5.01.03 Authority and Jurisdiction

The authority and jurisdiction of the subdivision standards of this UDO are described in [Chapter 1](#).

§ 5.02 Subdivision Design Standards

5.02.01 Design Principles / Types of Plats

A. **Design Principles.**

1. *Compatibility.* The proposed subdivision shall be designed in a way that:
 - a. *Environment.* Preserves and protects the environmental resources to the benefit of the subject property and abutting properties;
 - b. *Buffering.* Provides appropriate space for bufferyards and transitions between land uses or obvious changes in density or intensity alongside and rear lot lines;
 - c. *Common Open Space.* Maximizes the access to and benefit of common open spaces by providing for a connection to or continuation of the open spaces of abutting or adjacent properties and providing for maximum frontage and access to such open spaces;

- d. **Connectivity.** Provides appropriate, context-sensitive vehicular and pedestrian linkages, providing access while protecting neighborhood integrity and individual property values;
 - e. **Storm Water.** Protects neighboring property from undue storm water runoff;
 - f. **Access.** Minimizes interference with existing access to adjacent and nearby properties, unless new and improved access is provided by the proposed development; and
 - g. **Level of Service.** Does not reduce the level of service of public infrastructure that are provided to surrounding development.
2. **Tree Preservation.** The subdivision shall be designed to meet the standards of Section 3.04 and so that existing tree masses, large individual trees, and plant materials shall be preserved where practicable.
 3. **Topography and Natural Features.** The arrangement of lots and blocks and the street system should be designed to conserve and make the most advantageous use of topography and natural physical features.
 4. **Renewable Resources.** The blocks, lots, and buildable areas of a subdivision should be designed to take full advantage of sun and shade, where appropriate, wind, and other sources of renewable energy.
 5. **Street Arrangement.** The general arrangement of streets should conform to the functional street classification system and the network alignments of the Town.
 6. **Visual Qualities.** The system of roadways and sidewalks and the lot layout should be designed to take advantage of the visual, topographical, and environmental qualities of the area.
 7. **Full Extension Through Property.** If a development requires the installation of water and sewer utilities, curb and gutter, sidewalk, bike paths, or greenways, such infrastructure shall be extended along the full length of the property. For instance, if curb and gutter is required along a street frontage, it will be provided along the entire length of the frontage. New water and sewer utilities extended to a site for development shall be extended along either the full frontage of the street, or along the full extent of the property, depending on the location of said utilities. Greenways and bike lanes, where required as determined by bicycle and pedestrian plans and Administrator review, will be located along the entire frontage of the street, or along the full extent of the property, depending on the location of the infrastructure in relation to the site.
 8. **Underground.** For new commercial development and redevelopment involving tear-down and new construction, all utilities in both public and private rights-of-ways shall be placed underground and aerial crossing of utilities are prohibited, except when extreme conditions of underlying rocks or other conditions prevent this requirement from being met and only as approved by the Director.
- B. **Types of Subdivisions.** Before any land is subdivided, the owner of the property proposed to be subdivided, or his or her authorized agent, shall apply for and secure approval of the proposed subdivision in accordance with the following procedures, which include three principal steps for all subdivision types (see Table 5.02.01, *Classification of Subdivisions*):
1. **Minor (includes Family subdivisions)**
 - a. Sketch Plan;
 - b. Preliminary Plat; and
 - c. Final Plat.
 2. **Major Subdivision**
 - a. Sketch Plan;
 - b. Preliminary Plat; and
 - c. Final Plat.

Table 5.02.01
Classification of Subdivisions

Classification	Stage	Designated Agency (Decision-Maker)
Minor and Family Subdivisions	Sketch Plan	Director
	Preliminary Plan	Director
	Final Plat	Director
Major Subdivision	Sketch Plat	Director
	Preliminary Plan	Planning Board
	Final Plat	Director
Appeals	--	Planning Board, after receiving a recommendation from the Director

5.02.02 General Improvement Standards

- A. **Generally.** All proposed subdivisions subject to the regulation of this ordinance shall be designed to facilitate the most advantageous development of the entire community and shall bear a reasonable relationship to the Comprehensive Plan of the Town. The general design of subdivisions, Sketch Plans, and Preliminary Plans shall:
1. Take advantage of and be adjusted to the contours of the land so as to produce usable building sites and Streets of reasonable gradients;
 2. Consider the suitability of the land and its capability to support and maintain the proposed development.
 3. Consider site constraints, such as:
 - a. Topography;
 - b. Rock outcrops;
 - c. Flood damage prevention;
 - d. Erosion control;
 - e. Wetland preservation;
 - f. Storm water management;
 - g. Solar energy;
 - h. Tree preservation;
 - i. Noise and pollution control;
 - j. Habitat for endangered species;
 - k. Areas of historical, archaeological, or architectural significance;
 - l. Land use relationships; and
 - m. Other additional factors prescribed by this Ordinance.
- B. **Names.** The name of a proposed subdivision shall not duplicate or be phonetically similar to an existing subdivision name within the Town unless the proposed subdivision lies adjacent to or is in close proximity to the existing subdivision.
- C. **Entryways to Subdivisions.**

1. Signage and landscaping may be incorporated into entrances to subdivisions in accordance with landscaping and signage requirements of the land use code. In residential zoning districts, signage shall have a monument style base.
2. Entrance signage to a major subdivision may be illuminated in accordance with the lighting regulations herein.
3. Gates and/or structures that serve to stop traffic such as a staffed gatehouse or guard station, are not permitted.

5.02.03 Street Network and Design

- A. **Generally.** The proposed Street system shall extend existing and projected streets at not less than the required minimum width and shall be in conformance with the following criteria:
1. *Conformance with Town Standards.* All streets, driveways, and rights-of-way therefore shall be designed and constructed according to the requirements set out in the Town of Black Mountain standards and Details Manual.
 2. *Determination of Road.* Any access serving more than three lots shall be considered a road. Roads providing access to more than four lots must be constructed to requirements as indicated in the Town of Black Mountain Standards and Details Manual and may be dedicated to the town upon a written street dedication request.
 3. *Street Classification.* The final determination of the classification of Streets in a proposed subdivision shall be made by the Town or NCDOT.
 4. *Conformance with Adjoining Street System.* The planned Street layout of a proposed subdivision shall be compatible with existing or proposed Streets and their classifications on adjoining or nearby tracts.
 5. *Access to Adjoining Property.* Where in the opinion of the Town that it is desirable to provide for Street access to adjoining property, proposed Streets shall be extended to the boundary of such property.
 6. *Reserve Strips, Half Streets and Private Streets.* Reserve strips and non-access easements adjoining Street rights-of-way for the purpose of preventing access to or from adjacent property, (except those required to prevent access to Thoroughfares) and half-streets shall not be permitted under any condition. Private Streets shall be permitted only in specific developments as may be permitted by the Director. However, all public streets must meet Town standards.
 7. *Alleys.* All alleys shall maintain 20' of unobstructed, paved path for emergency vehicle access as required by Appendix D of the Fire Code.
 8. *Intersections.* Streets shall be designed so as to intersect as nearly as possible at right angles, and no street shall intersect any other Street at an angle of less than 60 degrees. Streets crossing natural areas or streams shall cross at or near to right angles as possible within limits of topographic conditions. Offset intersections are to be avoided. A minimum intersection offset of 125 feet shall be maintained.
 9. *Cul-de-sacs.* Cul-de-sacs should not be:
 - a. Used to avoid connection with an existing street, to avoid the extension of a thoroughfare or collector street, or to avoid connection to adjoining property; and
 - b. Extended for significant lengths unless necessitated by factors outside the subdivider's control, such as topography, property shape, property accessibility, or land use relationships.
 10. *Conformance with Street Design standards.* All streets, utilities, street lights, storm drainage appurtenances, pavement, curb and gutter sections, and side ditches, placed within public rights-of-way shall be designed in accordance with the construction standards established.

11. *Traffic Control Signs And Pavement Markings.* The subdivider shall install traffic control signs and pavement markings in accordance with the standards and specifications of the North Carolina Department of Transportation.
 12. *Subdivisions that Adjoin Existing Town or NCDOT Streets.* Subdivisions that adjoin existing streets maintained by either the Town or NCDOT shall dedication additional street right-of-way necessary to:
 - a. Meet the minimum width requirements for the type of classification of the adjoining Street;
 - b. Provide the entire minimum right-of-way when the subdivision is on both sides of an existing street right-of-way; and
 - c. Provide one-half of the minimum right-of-way, measured from the centerline of the existing Street when the subdivision is located on only one side of an existing Street.
 13. *Exception.* The improvement requirements of this Ordinance shall not apply to the subdivision of lots fronting on established streets that have already been accepted for maintenance by the Town or NCDOT.
 14. *Significant Entrances.* Additional right-of-way width streets designed to meet the standards stated in Section 5.02.04, *Street Cross Sections*, shall be required for turning lanes along any existing or proposed street that forms a significant entrance to a proposed subdivision where the improvements are necessary in order to provide for safe vehicular movement into and out of the proposed subdivision.
 15. *Temporary Turn Arouds.* The subdivider shall provide a temporary turn-around in the form of a cul-de-sac for streets that are stubbed at the boundary of an adjoining property to provide a connection to a future subdivision when the street serves as the frontage for one or more lots and are not corner Lots.
 16. *Variance.* The fire marshal and public works director may authorize a variance up to 20 percent (up to eight feet variation on right-of-way, and up to four-foot variation on total travel surface), based on topography, landscape context, traffic and public safety needs.
- B. **Connection to State Streets.** An approved permit is required to connect to any existing state system street.
- C. **Streets Not Dedicated/Private Streets.** All new roads are private until such time the owner petitions the Town to accept them in accordance with 5.05. The Town may or may not choose to take over a road.
- D. **Lots Require Access.** Unless a lot is set aside for conservation in perpetuity, all lots shall have access to a street and all proposed streets shall be installed or financially guaranteed prior to final plat approval. Access roads for both major and minor subdivisions shall traverse a surveyed right-of-way centerline showing calls and distances and its beginning and ending points in relation to adjoining properties.
- E. **Conservation Subdivision Exceptions.** In a conservation subdivision, rights-of-way that cannot meet the road standards as indicated in the Town of Black Mountain Standards and Details Manual without compromising performance goals of the conservation subdivision requirements and which access more than three lots must meet the approval of the public services director and fire marshal for the purpose of waste collection, snow removal and maintenance, as well as emergency vehicle access.
- F. **Pre-Existing Roads.** Pre-existing roads which do not meet these standards may be incorporated into a subdivision only upon approval of the fire marshal and public works director. Where pre-existing roads do not have a designated right-of-way, right-of-way shall be established to cover at least the maintenance area of the roadway (back of ditch to back of ditch). If an existing street serving the proposed development does not meet minimum town street standards, the developer shall make the necessary improvements to bring the street up to town standards or shall make a payment to the town to cover the cost of such improvements.
- G. **Visibility at Intersections.**

1. Uses located at a street intersection shall not have a dumpster or service area within 15 feet of the corner at the edge of pavement or the back of curb, whichever is closer.
2. Except for intersections within the Central Business district (CB), a sight triangle shall be maintained on each corner of property at the intersection of two streets, a street and an alley, a street and a railroad, and also at the point where driveways, private drives, or entrances to common parking areas intersect with a public or private street right-of-way. The sight triangle is a triangular area connecting the intersection of the right-of-way lines and the end points of the sight distance for the intersecting streets as set forth in the latest edition of the NCDOT subdivision roads minimum construction standards.
3. A sight triangle shall contain no fence, structure, earth bank, hedge, planting, wall or other obstruction between a height greater than two feet above the grade of the crown of the adjacent road as established by the zoning administrator. The following are exempted from this provision:
 - a. Public Utility Poles and Fire Hydrants.
 - b. Trees trimmed (to the trunk) to a height at least nine feet above the level of the intersection.
 - c. Other plant species of open growth habit that are not planted in the form of a hedge and which are so planted and trimmed as to leave in all seasons a clear and unobstructed cross-view.
 - d. A supporting member or appurtenance to a permanent building or sign lawfully existing on the effective date of this ordinance.
 - e. Official warning signs or signals or other appurtenances required for traffic control.
 - f. Signs which conform to the sign regulations with supports that do not encroach on the clear-vision area.
 - g. The Director may waive this provision where the natural contour of the ground is such that there can be no cross visibility at the intersection.

5.02.04 Street Cross Sections

- A. **Design Standards for Streets.** Design Standards for the various classes of streets shall apply as shown in Table 5.02.04, Minimum Public Street Standards.

Table 5.02.04 Minimum Public Street Standards					
Classification	Minimum Right-of-Way	Minimum Street Width Face to Face of Curb	Ribbon Paving	Minimum Centerline Radius	Minimum Vertical Curve Sight Distance
Arterial	To be determined by Town and/or NCDOT				
Collector	60 feet	24 feet (6)	24 feet (5) (6)	230 feet	200 feet
Minor Residential and Cul-de-sac (1)	120 feet	88 feet (6)	24 feet	230 feet	200 feet
Commercial/Industrial	60 feet	29 feet (6)	N/A	230 feet	200 feet
Minor Comm/Ind and Cul-de-sac	120 feet	88 feet (6)	N/A	230 feet	200 feet
Infill Street (7)	60 feet	24 feet (6)	N/A	230 feet	200 feet

Table 5.02.04
Minimum Public Street Standards

Classification	Maximum Grade	Rate of Vertical Curvature	Min. Curb and R/W Radii at Intersections	Min. Offset from Adjacent Intersection	Minimum Angle of Intersection
Arterial	To be determined				
Collector	9 percent ⁽³⁾	(4)	30 feet	200 feet	60 degrees
Minor Residential and Cul-de-sac (1)	9 percent ⁽³⁾	(4)	20 feet	125 feet	60 degrees
Commercial/Industrial	9 percent ⁽³⁾	(4)	30 feet	200 feet	60 degrees
Minor Comm/Ind and Cul-de-sac	9 percent ⁽³⁾	(4)	30 feet	125 feet	60 degrees

Table Notes:

1. Residential Cul-de-sac (Turnaround): 60' right-of-way radius - 44' paved radius to face of curb for curb and gutter street - 44 feet paved radius for ribbon paved street.
2. Commercial/Industrial Cul-de-sac (Turnaround): 60' right-of-way radius - 44' paved radius to face of curb.
3. Maximum grade for 100' each way from intersections shall not exceed 5%.
4. Formula for determination of length of vertical curve required to provide minimum sight distance:

$$L = KA$$

$$L = \text{length of vertical curve in feet}$$

$$K = \frac{\text{rate of vertical curvature in feet per percent of A}}{\text{algebraic difference of grades in percent}}$$

This rate will vary based on the topography and AASHTO rules. (American Association of State Highway Transportation Officials)
5. Ribbon paving only allowed for those developments to be used as single-family residential, where all lots are 20,000 square feet or larger and where no existing curb and gutter street system would, in the opinion of the Town Council, likely be connected to the new street.
6. A wider street cross-section will be required as needed along any portion of a Collector or along its entirety to accommodate left turn lanes and/or parking lanes. For example, where a Collector provides direct connection between two or more Arterial Streets, left turn lanes would be required as a minimum at Arterial Street intersections.
7. In existing residential neighborhoods where residential infill development is desired, through the minor subdivision process, vehicular access may be granted through the provision of a paved public right of way that is at a minimum equal to the width of pavement on the streets connecting to the proposed new access way. An additional 5' utility easement is required on the new lots fronting the new pavement. The developed access way will be of like or better design of the existing adjoining streets. Curb and gutter, stormwater basins, and other amenities will at least match those found in the existing neighborhood and approved by the Town. Access way naming will conform to the Town requirements. Any new way-finding signage required by Ordinance will be provided at the developer's expense.

- B. **Materials.** No base course shall be placed on muck, pipe clay, organic matter or other unsuitable matter, and a minimum compaction rate of subgrade prior to paving shall be as indicated in the Town of Black Mountain Standards and Details Manual.
- C. **Access for Handicapped Persons.** Where curbs are provided on streets or where curbs and sidewalks are constructed within a subdivision, any construction shall be in full compliance with the provisions of G.S. 163-44.14 which sets forth standards for providing curb ramps or curb cuts for handicapped persons.

5.02.05 Street Names and Street Lights

A. **Street Names.**

1. *Generally.* Proposed street names shall not duplicate nor too closely approximate phonetically the name of any street within the Town or Buncombe County. Where proposed streets are extensions of existing streets, the existing street names shall be used except where a new name can reasonably be used to facilitate proper house numbering or to avoid further street name duplication.
2. *Street Name Submittal.* A street name review and confirmation form shall be submitted to Buncombe County E911 Addressing Services for review and approval prior to or not later than the Preliminary Plat submittal.
3. *Cul-de-Sacs and Terminating Streets.* Cul-de-sacs or streets terminating in a similar dead-end shall have the "Courts" suffix if oriented east-west or "Places" if oriented north-south.

B. **Street Lights.** The Town shall approve developer installed street lighting at appropriate locations in the Subdivision in accordance with Town Standards.

5.02.06 Blocks

- A. **Generally.** Blocks shall have sufficient width to allow two tiers of lots of minimum depth except where single-tier lots are required to separate residential development from through vehicular traffic or another type of use or when abutting a water area.
- B. **Block Dimensions.** Blocks shall not be less than 400 feet nor more than 1,320 feet in length. Block length shall be measured between the centerline of two through streets. Alleys and cul-de-sacs shall not be considered through streets.

5.02.07 Lots

- A. **Generally.** The size, shape and orientation of Lots shall be appropriate for the Location of the proposed subdivision, for the type development contemplated, and in consideration of the method of providing water and sewer facilities to the Lots.
- B. **Minimum Lot Standards.** Lots shall meet or exceed zoning district standards and shall be designed for their potential uses, so that adequate buildable area is provided and adequate room for required setbacks, bufferyards, and other required improvements will exist on the lot.
1. *Drainage Accommodations.* Lots shall be designed so as to provide positive drainage away from building sites and individual Lots shall be coordinated with the general storm drainage plan for the subdivision. Drainage shall not only include lot drainage, but also structure drainage as follows:
 - a. Downspouts cannot be placed so that the stormwater discharge travels onto another private property.
 - b. Downspouts shall discharge on the property they originated on so that the water will percolate into the soil.
 - c. Downspouts can be run out to the right-of-way if there is a conveyance that can carry the water.
 2. *Lot Boundaries.* Lot boundaries shall be made to coincide with natural and pre-existing man-made drainageways to the extent practicable to avoid the creation of Lots that can be built upon only by altering such drainageways.
 3. *Non-Buildable Lots.* Lots or parcels created through the subdivision process which are not intended for building purposes shall be so designated and perpetually bound as "not-buildable" unless subsequently released through the subdivision process.
 4. *Size Calculation.* Street right-of-way, setback requirements from North Carolina surface water streams as designated on USGS topography maps, sidewalks and other publicly dedicated areas shall not be

included in the calculation of lot size. The location of structures and their setbacks shall be indicated on the preliminary plat. Qualified conservation subdivision plans shall meet district density requirements, but have flexibility in all other lot requirements as long as the proposed subdivision meets the site capacity analysis.

C. Lot Frontage Requirements.

1. *Generally.* Every lot resulting from a subdivision of land shall abut and have direct access to a publicly maintained street or other public rights-of-way legally dedicated, except as provided in this Section.
2. *Maximum Number of Lots.* For proposed subdivisions with frontage on a thoroughfare street, the maximum number of lots to be created shall be limited to five lots. Any proposed subdivision proposing more than five lots shall require the additional lots to be served by a newly constructed internal public street.
3. *Exceptions.* Frontage on a public street shall not be required in the following situations; provided, however, that an easement providing access to the public street shall be recorded and substituted with the application for development approval:
 - a. Parcels within nonresidential subdivisions;
 - b. Townhome lots where the individual lots are separated from a public right-of-way by a strip of land under common ownership by the owners of the townhome lots;
 - c. Lots fronting on approved private streets;
4. *Adequate Frontage.* Lots shall be designed with adequate frontage for the purpose of providing direct physical access to the property from public streets for vehicles and utilities and for public safety equipment.

D. Cul-De-Sac Lots. A lot located on a cul-de-sac, as depicted in Figure 5.02.07, *Cul-de-Sac Lots*, that does not maintain the minimum required width along the public street frontage shall provide:

1. Lot width of at least 50 percent of the minimum required, but in no case less than 25 feet; and
2. Lot area equal to or greater than the minimum lot area (if one is specified); and
3. The minimum required lot width at the building line.

E. Lot Size Reductions.

1. All subdivision of property created after the effective date of this chapter must conform to the lot requirements of the district in which it is located.
2. In areas not served by a public or community sewer system, the minimum lot area shall be that necessary for safe on-site waste disposal system as determined by the county health department, but in no case, shall the lot be smaller than the required area for the zoning district in which it is located.
3. Subdivisions for the purpose of land conservation or for the dedication of open space which are exempt from the subdivision regulations are exempt from the requirements of this chapter.

F. Location of Buildings on Irregularly Shaped Lots. Locations of front, side and rear setback lines on irregularly shaped lots shall be determined by the zoning administrator 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.

Figure 5.02.07
Cul-De-Sac Lots



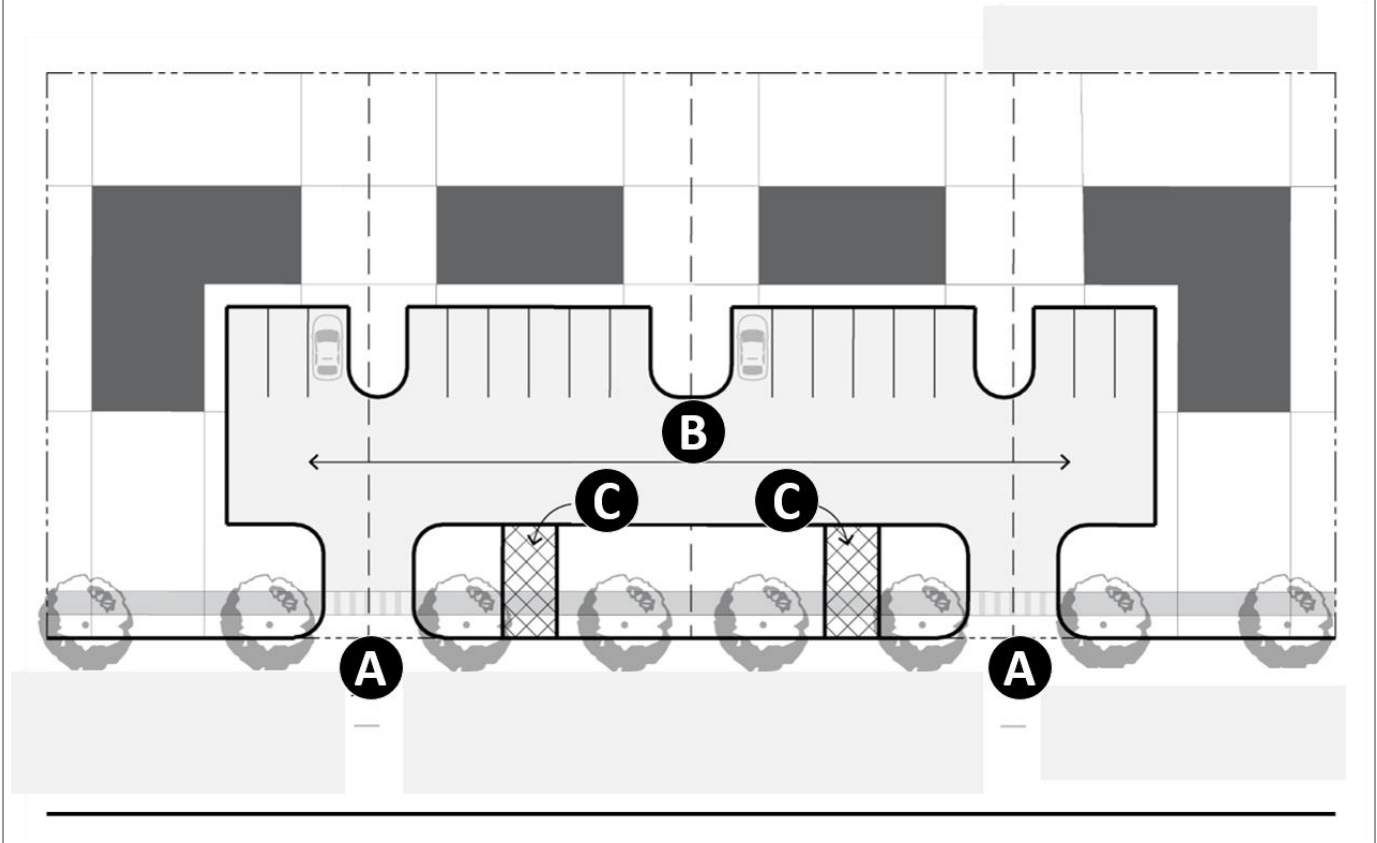
5.02.08 Easements

- A. **Generally.** The specific standards for acceptance of easements shall be subject to the technical design standards of this UDO and any other adopted policy or manual of the Town.
- B. **Compliance and Acceptance.** All easements and Rights of Way shall be in full compliance with this UDO prior to acceptance.
 - 1. The approval and recordation of a final plat constitutes an offering to the town and the public of the right-of-way of each public street, alley, greenway or utility or drainage easement shown on such plat.
 - 2. The approval and recordation of a plat does not constitute acceptance of the right-of-way or easement or responsibility for its maintenance by the town, unless the town requires it as part of the development approval, or accepts any such offer of dedication by resolution of the town council at the time of final plat approval, by a separate, express action at a later time, or by actually exercising control over and maintaining such facilities.
 - 3. Rights-of-way which are intended to remain private or which are not accepted by the Town at the time of approval of the final plat, must be subject to a road maintenance agreement.
- C. **Types of Easements.** During development review, a development review body may require a variety of easements. These easements may be for purposes including, but not limited to:
 - 1. *Water;*
 - 2. *Wastewater;*
 - 3. *Street lights;*
 - 4. *Other utilities;*
 - 5. *Drainage, floodways, and floodplains;*

6. *Landscape;*
 7. *Emergency access;*
 8. *Vehicle access across properties;*
 9. *Pedestrian access; and*
 10. *Natural resource or open space conservation.*
- D. **Dedication and Utility Placement.** The subdivider shall dedicate easements to the public that allow every lot within a subdivision to have access to services listed in Subsection C, Types of Easements, above. Alternatively, the Director of Public Works may allow such services within the public right-of-way.
- E. **Encroachment.** No structure, slab, foundation, or other improvement shall be placed within any dedicated public easement without written permission from the Director of Public Works and all impacted franchise utility companies.
- F. **Private Easements.** When private easements exist that may potentially interfere with a proposed public dedication or easement, the subdivision shall be designed to mitigate or minimize the number and extent of such conflicts.
- G. **Form.** All required covenants and easement instruments shall be submitted on a form acceptable to the Town Attorney.
- H. **Locations and Widths of Public Easements.**
1. *Front.* Unless otherwise required in this UDO or as otherwise required by the Director of Public Works, easements that are 10 feet in width shall be provided at the front of all lots. This is not in addition to right-of-way, but inclusive of such.
 2. *Unplatted or Separate Ownership.* Where the proposed subdivision abuts an unplatted area or property under separate ownership on which no easements exist, and the subdivider cannot arrange for one-half of the easement to be dedicated by separate instrument, the easement shall be located entirely within the proposed subdivision.
- I. **Side Easement.** If conditions exist which make it impractical to serve lots with front easements, easements may be required along side or rear lot lines. Such easements shall be centered on side lot lines. The width of a side yard easement shall be a total width of 10 feet, centered on the lot lines, upon approval of the Director of Public Works, and all affected franchised utility companies.
- J. **Emergency Access Easements.** The subdivider shall provide emergency access (fire lane) easements where necessary to provide adequate protection for a structure.
4. *Dimensions.* Emergency access easements shall have a minimum width of 28 feet and a minimum height clearance of 14 feet. Any emergency access easement shall either connect at each end to a dedicated public street or be provided with a turnaround having a minimum diameter of 80 feet with an additional distance of 10 feet on all sides clear of permanent structures. The driving surface within emergency access easements shall be designed and constructed according to Appendix D of the Fire Code, as amended.
 5. *Location.* All structures shall be located within 150 feet of a dedicated and improved emergency access easement or public street.
- K. **Cross-Access and Shared Access Easements.** As depicted in Figure 5.02.08H-1, Cross-Access and Shared Access, the subdivider shall provide shared access (A in the Figure below) and cross-access (B in the Figure below) easements, for multifamily, nonresidential, and mixed use developments that front on locally maintained thoroughfares or collector streets, subject to the following standards. Driveway separation and width on locally maintained collector and arterial streets shall comply with Section 5.02.03, *Street Network and Design*.

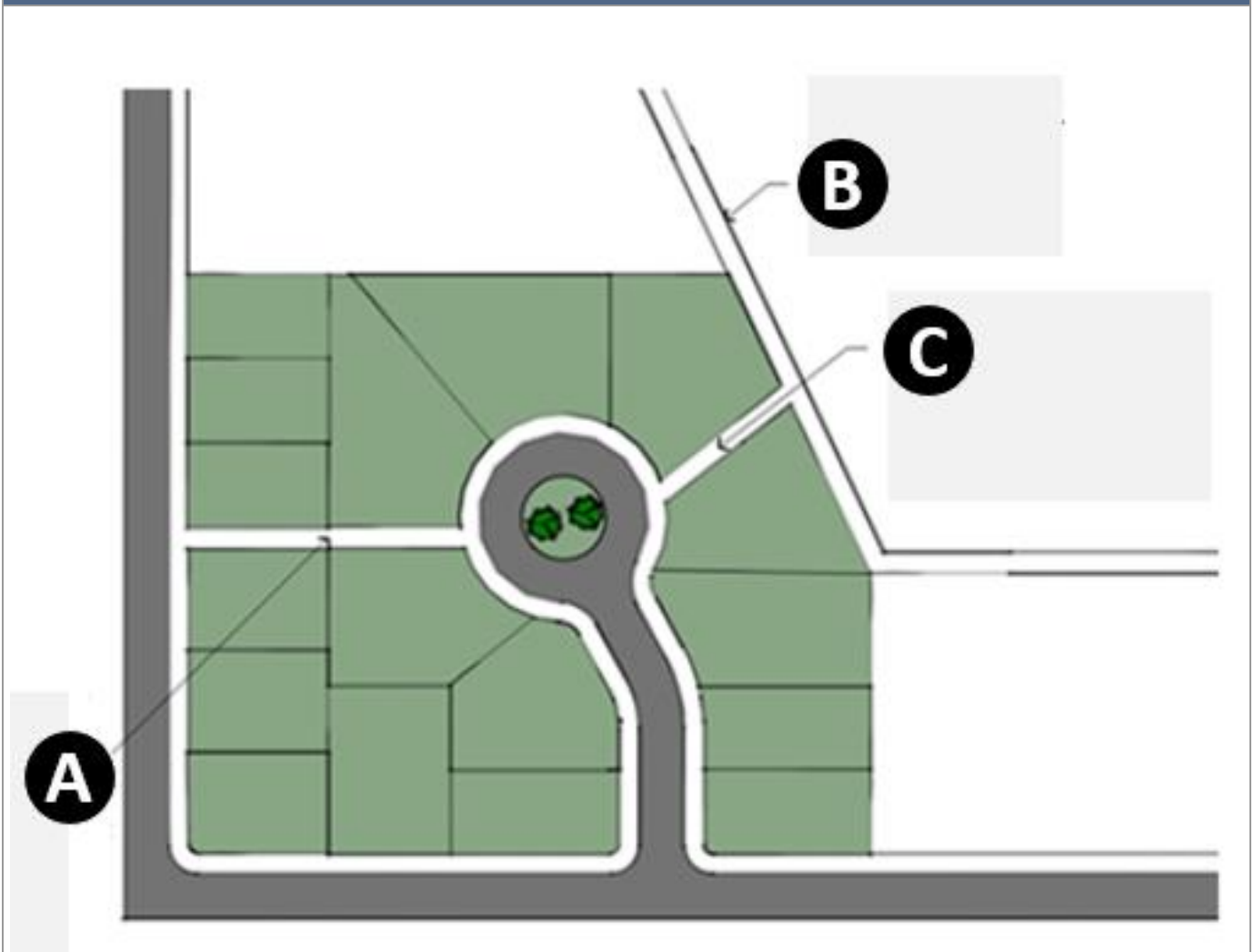
1. *Separate Ownership.* Where adjacent properties are separately owned and not part of the same development, the Town may require shared access or internal cross access easements, or both, as the properties are platted. As such, a development review body may grant a subdivider temporary individual access (C in the Figure below) if:
 - a. The subdivider demonstrates that the adjacent landowner refused a reasonable offer with regard to cross-access;
 - b. The subdivider demonstrates that the proposed temporary access will not materially affect the safe and efficient flow of traffic; and
 - c. The subdivider records a covenant to ensure that the connection will be provided and access will be consolidated upon the earlier of:
 - i. Approval of a plat of the adjacent property, if providing such connection is a requirement of the approval for the adjacent property; or
 - ii. The subject parcel and the adjacent parcel coming under common ownership.
2. *Common Ownership or Phased Subdivisions.* Phased subdivisions, subdivisions under the same ownership, or parcels that are consolidated for the purposes of development and comprised of more than one building shall provide cross access and shared access easements as follows.
 - a. The property proposed for development shall include cross-access easements with connections to abutting cross-access points or, if the abutting property is undeveloped or without cross-access points, stub-outs at locations on the property that allows for a connection in the future. In addition, if the abutting property is undeveloped or is without a driveway suitable for sharing, the property proposed for development shall include a shared access easement on its perimeter, in a location suitable for sharing access to the street with the abutting property in the future.
 - b. The subdivider shall record a covenant to allow for future connection of shared access and cross-access stub-out easements to comparable facilities on abutting parcels when they develop or are redeveloped.
 - c. Cross-access easements shall be a minimum of 24 feet in width.

Figure 5.02.08-1
Cross-Access and Shared Access



- L. **Pedestrian Access Easements.** Except for subdivisions where all lots are greater than five acres, the subdivider shall provide the following pedestrian access easements. A pedestrian access easement shall be a minimum of 10 feet in width and shall include an all-weather surface with a minimum width of five feet.
6. *Mid-block Pedestrian Connections.* The subdivider shall provide a pedestrian access easement (A in Figure 5.02.08-2, Pedestrian Connections, below) to bisect blocks greater than 800 feet in length, where such blocks abut a thoroughfare or collector street. In addition, the subdivider shall provide such connections to establish linkages to common facilities, such as parks, open areas, and institutional and civic uses (B in the Figure below).
 7. *Cul-de-Sac Turnaround Pedestrian Connections.* The subdivider shall provide a pedestrian access easement that connects the cul-de-sac turnaround to existing or proposed sidewalks, trails, and common facilities, as depicted in (C in the Figure below).

Figure 5.02.08-1
Pedestrian Connections



M. Conservation Easements.

1. *Permanent Preservation.* Conservation easements are required in order to permanently preserve common open space required by this UDO, and to protect natural resources that are required to be protected.
2. *No Destructive Encroachment.* Other easements that may result in the disturbance of land shall not be permitted to encroach into a conservation easement, except that pedestrian access easements and non-destructive utility and drainage easements are permitted within areas protected by conservation easements.
3. *Responsible Party.* Conservation easements shall provide for permanent management and maintenance of the property by a responsible party other than the Town, such as a nonprofit land trust or a homeowners or property owners association.

5.02.09 Perimeter Bufferyard

- A. **Generally.** A bufferyard as required in Section 3.04.05 Bufferyard Landscaping, shall be required in a landscape easement or as an undevelopable tract along the perimeter of a residential, mixed use, or nonresidential subdivision or development to separate the subdivision or development from abutting thoroughfares and other subdivisions or developments.
- B. **Label on Plat Required.** All required buffer yards shall be platted in easements or as common areas and may be included as “open space” subject to the standards and criteria as set forth in Section 5.02.14, Open Space and Park Design and Dedication.

5.02.10 Sidewalks and Accessibility

- A. **Generally.** Sidewalks are required to be built in conjunction with certain development or redevelopment of properties.
 - 1. *Location.* Sidewalks shall be constructed within the street right-of-way in accordance with town or NCDOT Standards. Any location in which sidewalk is not within the dedicated street right-of-way must be privately maintained unless a sidewalk easement dedicated to the Town of Black Mountain is provided of sufficient width to maintain the sidewalk.
 - 2. *Encroachment Permit Required.* No sidewalk may be constructed within the NCDOT right-of-way until an encroachment agreement has been approved by the NCDOT district engineer.
 - 3. *Trail in Place of Sidewalk.* An eight-foot-wide greenway trail may be placed instead of sidewalk if consistent with the comprehensive pedestrian master plan. A subdivider may achieve alternative compliance with the standards of this Section upon approval by the Planning Board of an alternative sidewalk or trail plan that provides equal or greater pedestrian circulation. The subdivider shall submit such plan at the time of preliminary plat review. The Planning Board may approve such plan if better pedestrian and bicycle access and connectivity is provided through the use of off-street trails or multi-use pathways that connect to sidewalks or off-street trails or multi-use pathways on the perimeter of the parcel proposed for development.
 - 4. *Designed with Safety.* Sidewalks and greenways must be planned in compliance with the town's comprehensive pedestrian master plan, and should be designed to promote traffic safety.
- B. **Where Required.**
 - 1. A property owner developing land shall install a five foot sidewalk in the following situations:
 - a. *Adjoining a Street.* Subdivisions that adjoin, has legal access to, or will have legal access to, an existing or proposed major or minor street, shall construct a sidewalk along the frontage of such street where the street adjoins the Subdivision.
 - b. *Extension of Existing Sidewalks.* When a subdivision adjoins, or will adjoin an extension, of a street that has a sidewalk on one or both sides of the right-of-way within 500 feet of the boundary of the land to be subdivided, the subdivider shall construct a sidewalk along the frontage of such Street where the Street adjoins the Subdivision in such a way that the existing sidewalk pattern will be extended.
 - c. *Creation of New Streets.* Subdivisions that create new public or private streets, the subdivider shall construct a system of sidewalks in an amount equal to one linear foot of sidewalk for each one feet of length of public Street within the Subdivision. These will be required on both sides of the street and around a cul-de-sac unless otherwise noted.
 - d. *Destinations.* Sidewalks shall be constructed within the interior of the development to link residential buildings with other destinations such as, but not limited to parking, adjoining streets, mailboxes, trash disposal, adjoining sidewalks or greenways and on-site amenities such as

recreation areas. These interior sidewalks shall be constructed in accordance with the standards for sidewalks in Subsection C, Construction Standards, below.

- e. *Exemptions.* Infill development in existing residential developments without sidewalks are not required to install a sidewalk on their property.

C. Construction Standards. All sidewalks shall:

1. Be extended across any waterways, streams, creeks, rivers, or other water bodies, at the expense of the developer, to continue pedestrian connectivity along the frontage of the development. Connectivity may be provided across existing bridges or structures with the permission of the North Carolina Department of Transportation, or via a separate pedestrian bridge to be provided by the developer.
2. Be constructed along all frontage roads providing access to the development for the full frontage of the development; and
3. Have minimum widths (no less than five feet),

D. Within Major Subdivisions.

1. All major subdivisions shall have a plan for internal pedestrian circulation as well as points of connectivity with exterior transportation corridors.
2. Major subdivisions, other than conservation subdivisions, shall provide a network of sidewalk or greenway trails to serve all lots. The total length of these facilities shall be equal or greater than the total of linear feet of new roadway as measured at the centerline. As part of preliminary plat review, the planning board may require that the applicant:
3. Place a portion of the required linear footage of sidewalk or greenway outside of the subdivision within the public right-of-way where there is opportunity to improve connectivity to the subdivision being developed (such as to link the subdivisions' sidewalk to an existing bus stop, park, sidewalk or greenway) in exchange for equal reduction in linear footage within the subdivision interior.
4. Pay the financial equivalent to the town in order to develop sidewalks on arterial or collector roads that serve that subdivision, or
5. Develop a greenway trail of equivalent cost through the property in order to implement the town's greenway master plan and instead of sidewalks or in combination with required sidewalks.
6. Whenever practicable, the construction of a sidewalk shall be on a line parallel with the edge of the public right-of-way of a street, highway or road, and the edge of a sidewalk will be a minimum of two feet from said roadway's edge of pavement or its curb/gutter. This separation area shall be planted with grass, trees, or other plants consistent with the yards in the subdivision or shall be incorporated into the stormwater plan for the development.
7. Sidewalks shall be a minimum of five feet in width within subdivisions, or a minimum of six feet in width on adjacent arterial roads or NCDOT roadways. Paved trails or greenways shall be a minimum of six feet in width, with ten feet in width being preferred. Trail width may vary to minimize trail impacts on natural features or trees, or to transition to a connection with another trail or sidewalk. Decorative elements such as brick pavers or stamped concrete may be incorporated as long as they do not pose a hazard for users. Sidewalk or trail surface and construction must be approved by the town's public works director prior to dedication to the town.
8. Sidewalks shall be constructed of not less than 4,000 P.S.I. concrete and shall be five feet wide, four inches thick, constructed on an adequately graded base, except that where the sidewalk crosses a driveway it shall be six inches thick. The surface of the sidewalk shall be steel trowel and light broom finished and cured with an acceptable curing compound. Tooled joints shall be provided at intervals of

not less than five feet and expansion joints at intervals of not less than 30 feet. The sidewalk shall have a maximum lateral slope of one-fourth-inch per foot.

5.02.11 Public Water Systems

- A. **Generally.** All required water line extensions shall include appropriate valves, hydrants, taps, and service to the property line of each lot as required by Town Standards.
1. The preliminary subdivision plat must be accompanied by satisfactory evidence as to the proposed method and system of water supply. The town requires connection to existing public water if any such lines are located within 300 feet of the property boundary, unless topography does not allow such connection or requisite easements cannot be obtained. The installation of all said systems except wells serving only one connection shall be required prior to final plat approval unless financially guaranteed.
 2. Wells owned and operated by a public or private entity must be approved by the Buncombe County Health Department or other applicable state agency.
 3. Water easements shall be designated on preliminary and final plats.
 4. All utilities serving new major subdivisions must be placed underground.
- B. **Extension of Public Water Utilities.**
1. *Subdivision in Town Limits.* Proposed subdivisions developed within the Town Limits shall be required to:
 - a. Extend the public water system throughout the subdivision to provide service to each lot located within that subdivision;
 - b. Include appropriate valves, hydrants, taps, and service to the property line of each lot as required by standards; and
 - c. Obtain approval for construction by the appropriate agency of the State of North Carolina.
 - d. Proposed subdivision water system extensions shall be designed by a licensed professional engineer.
 2. *Subdivision Partially Within the Town Limits.* Public water utilities shall be extended to all subdivisions located partially within the Town limits and partially located outside the city limits when one of the following conditions are present:
 - a. An existing water line of adequate size and water flow and pressure crosses the subdivision property;
 - b. An existing water line of adequate size and water flow and pressure is immediately available from an adjacent public right-of-way; or
 - c. The Town has plans or will extend such a water line to the property line of the subdivision at no cost to the subdivider.
 3. *Phased Development.* Subdivisions developed in phases or part of a larger tract of land owned or under common ownership shall be required to extend public water utilities when an existing or proposed public water system line extends or will be extended to within 150 feet of the entire unsubdivided parcel.
 4. *Oversized Utilities.* In order to serve future development, the Town may require the Subdivider to install oversized water utility improvements or extended the length of the utility that beyond the size, pressure, and flow required to serve the subdivision. In such cases, the Town shall enter into an agreement to reimburse the subdivider for the over sizing and/or extension based upon rates as agreed to by the Town.

5. *Responsibility.* Unless otherwise approved by Town Council, the cost of extension shall be the responsibility of the developer.
- C. **Fire Hydrants.** New subdivisions shall install fire hydrants that meet the specifications and requirements of the Town.
 1. *Dedication.* Any hydrant connected to the Town's water system shall be dedicated to the Town.
 2. *Spacing.* All newly installed fire hydrants shall be spaced in the following intervals:
 - a. Subdivisions in all zoning districts shall be spaced at 400-feet; and
 - b. One fire hydrant shall be installed within 400 feet of the most remote area of the building.
 - c. Structures with internal sprinkler systems shall provide fire hydrants within 200 feet of the Fire Department Connection. Water utility mains shall be sized to provide 500 gpm exterior hose streams.

5.02.12 Public Wastewater Systems

- A. **Generally.** All required wastewater extensions shall include appropriate valves, hydrants, taps, and service to the property line of each lot as required by Town Standards.
 1. The preliminary subdivision plat must be accompanied by satisfactory evidence as to the proposed method and system of sanitary sewage collection and disposal. The town requires connection to existing public sewer lines if any such lines are located within 300 feet of the property boundary, unless topography does not allow such connection or requisite easements cannot be obtained. The installation of all said systems except septic tanks serving only one connection shall be required prior to final plat approval unless financially guaranteed.
 2. Septic systems owned and operated by a public or private entity must be approved by the Buncombe County Health Department or other applicable state agency.
 3. Sewer and other utility easements shall be designated on preliminary and final plats.
 4. All utilities serving new major subdivisions must be placed underground.
- B. **Extension of Public Sewer Utilities.**
 1. *Subdivision in Town Limits.* Proposed subdivisions developed within the Town Limits shall be required to:
 - a. Extend the public wastewater system throughout the subdivision to provide service to each lot located within that subdivision;
 - b. Include appropriate manholes, lift stations, pumps, cleanouts, taps, valves, and service to the property line of each lot as required by Town standards; and
 - c. Obtain approval for construction by the appropriate agency of the State of North Carolina.
 - d. Proposed subdivision wastewater system extensions shall be designed by a licensed professional engineer.
 2. *Subdivision Partially Within the Town's Limits.* Public wastewater utilities shall be extended to all subdivisions located partially within the Town limits and partially located outside the Town limits when one of the following conditions are present:
 - a. An existing wastewater line of adequate size and wastewater flow and pressure crosses the subdivision property;
 - b. An existing wastewater line of adequate size and wastewater flow and pressure is immediately available from an adjacent public right-of-way; or

- c. The Town has plans or will extend such a wastewater line to the property line of the subdivision at no cost to the subdivider.
3. *Phased Development.* Subdivisions developed in phases or part of a larger tract of land owned or under common ownership shall be required to extend public wastewater utilities when an existing or proposed public wastewater system line extends or will be extended to within 150 feet of the entire unsubdivided parcel.
4. *Exception.* The Town may elect to not extend wastewater utilities of sufficient size, flow, and pressure to the subdivision or within 150 feet of the subdivision perimeter because of topographic features, legal obstacles, or financial reasons, the subdivider shall not be required to extend wastewater lines to each lot nor provide wastewater service to the subdivision.
5. *Oversized Utilities.* In order to serve future development, the Town may require the Subdivider to install oversized wastewater utility improvements or extended the length of the utility that beyond the size, pressure, and flow required to serve the subdivision. In such cases the Town shall enter into an agreement to reimburse the subdivider for the over sizing and/or extension based upon rates as agreed to by the Town.

5.02.13 Storm Drainage

- A. **Generally.** A comprehensive storm drainage system shall be planned and implemented for each subdivision in accordance with the general standards and requirements of this section.
- B. **Storm Drainage Plan Consideration.** Storm drainage plans shall be considered on an individual basis depending upon the situation within a given subdivision. The requirements of the Flood Damage Prevention section shall apply to storm drainage design where applicable. The Town Engineer shall review Storm Drainage Plans for adequacy for engineering design practice and Town standards.
- C. **Obstruction of Drainage Channels Prohibited.** No fences or structures shall be constructed across an open drainage channel that will reduce or restrict the flow of water.
- D. **Lot Grading Standards.** The following standards shall be followed in establishing the grading plan for a development:
 1. *Positive Drainage Required.* Developments shall be designed and constructed with a positive drainage flow away from buildings towards approved stormwater management facilities. Plans for drainage facilities shall be approved by the Engineer. All interim and permanent drainage facilities shall be designed and constructed in accordance with the standards established in the section. Additional requirements for individual lots and structures are found in [5.02.07](#), Lots.
 2. *Accounts for All Development.* In the design of site grading plans, all impervious surfaces in the proposed development (including off-street parking shall be considered.
 3. *Protection from Sedimentation.* Site grading and drainage facilities shall protect sinkholes, wetlands, ponds and lakes from increased sediment loading.
 4. *Increased Runoff Prohibited.* Site grading shall not increase the volume or velocity of runoff onto downstream properties unless specifically approved as part of a project's drainage plan.
- E. **Landscaping.**
 1. *Disturbed Areas.* All disturbed areas within the dedicated right-of-way and easements of any subdivision street shall be restored with vegetation.
 2. *Street Trees.* Street trees shall be planted or, where permitted trees already exist, consistent with [Section 3.04, Trees, Landscaping, and Buffering](#), maintained and protected between the paved areas

and sidewalks. Where no sidewalks are required, street trees shall be planted or existing trees shall be maintained or protected between the paved areas and the edge of the right-of-way.

- F. **Designation as Open Space.** Stormwater facilities to be located in designated open space areas shall be regulated in accordance with Section 5.02.14, *Open Space and Park Design and Dedication*.
- G. **Best Management Practices (BMP) Buffers.** There must be 50 feet of separation from normal pool to the property line and 20 feet of separation from the 100-year level to the property line.
- H. **Submitting a Request for Modification of a Stormwater Control Measure (SCM).** Once a SCM is approved, any changes must be submitted on a site plan to the Stormwater Department showing location, dimensions, and materials proposed to be used in the modification, along with original plan of Stormwater Control Measure (SCM) as follows:
 - 1. *Submit appropriate permit application.*
 - a. If the proposed modification involves disturbing 1,000 square feet or more, a land disturbance permit will be required.
 - b. If the proposed modification will be less than 1,000 square feet disturbance, a Residential Permit will be required.
 - 2. *Application and site plan will be submitted to Town Engineer for review.*
 - a. If modification will impact the performance of the SCM, change will be denied.
 - b. If modification will not impact the performance of the SCM, change may be approved, as long as the modification does not violate any other Town codes or ordinances.
 - 3. Modification must also adhere to all other Land Use Code for the Town of Black Mountain as well as other Town Codes of Ordinances and Building Code.
 - 4. Once modification has been approved, construction may begin. Depending on the modification, inspections may be required at different stages of the construction process.
 - 5. After construction is complete, application and site drawings must be recorded on the property deed with the Buncombe County Register of Deeds and submitted to the HOA so that the annual inspection of the development's SCM will include all modifications.
 - 6. Town will add a modification to the official record of the development's SCM.
- I. **Additional Guidance.** For additional guidance, refer to the Town of Black Mountain Stormwater Management Utility and Stormwater Management Enterprise Fund in the Town Code, located [here](#).

5.02.14 Open Space and Park Design and Dedication

- A. **Generally.** The provisions of this section shall apply to an application for a major subdivision.
- B. **Preservation and Maintenance of Open Space.**
 - 1. *Required Open Space for Subdivisions.* Required open space shall be reserved for any major subdivision of land shall be equivalent to 15 percent of the total land area of the original parcel or combination of parcels used in the subdivision as dedicated, common open space. Designation of easements to the Town for parks or greenways according to an approved plan may qualify for the dedicated open space requirements but must be approved by the Planning Board.
 - 2. *Exemption.* Subdivisions with less than 50 dwelling units and located within 1/4th of a mile of walking distance from an existing or planned public park (or a public school with recreation facilities accessible to the general public) shall be exempt from the open space dedication requirements of this UDO. Subdivisions with 50 or more dwelling units, regardless of proximity to an existing or planned public park, shall not be exempt.

3. *Maintenance.* Open space areas shall be maintained so that their use and enjoyment as open space are not diminished or destroyed. Open space areas may be owned, preserved, and maintained as determined by the Planning Board by any of the following mechanisms:
 - a. Dedication of open space to the Town, an appropriate public agency, or a non-profit entity (such as a land conservancy) if such an agency or entity is willing to accept the dedication and is financially capable of maintaining such open space; or
 - b. Common ownership of the open space by a home owner's or property owner's association which assumes full responsibility for its maintenance. The restrictive covenants shall provide that, in the event the homeowner's association fails to maintain the open space according to the standards of this UDO, the Town may following reasonable notice:
 - i. Demand that deficiency of maintenance be corrected; or
 - ii. Enter the open space for maintenance with the cost of such maintenance charged to the homeowners association.

C. Open Space Characteristics.

1. *Generally.* Land designated as open space shall be maintained as open space and may not be separately sold, subdivided, or developed except as provided below. It shall be noted on the final plat accordingly that it is not to be sold.
2. *Open Space Provisions and Maintenance Plan Required.* Any areas preserved as open space shall be indicated on a preliminary and/or final subdivision plat. An Open Space Provision and Maintenance Plan shall be submitted as a part of the application for development approval including the project phasing schedule. This plan shall designate and indicate the boundaries of all open-space areas required by this UDO. The plan shall:
 - a. Designate areas to be preserved as open space. The specific design of open- space areas shall be sensitive to the physical and design characteristics of the site.
 - b. Designate the type of open space which will be provided (passive or active).
 - c. Specify the manner in which the open space shall be perpetuated, maintained, and administered.

D. Open Space Types and Dimensions.

1. *Types.* The types of open space together with the maintenance required for each type, are as follows:
 - a. *Active Open Space.* Active open space areas shall be accessible to all residents of the development and shall be maintained by the developer, and or the property or homeowner's association.
 - b. *Passive Open Space.* Passive open space maintenance is limited to removal of litter, dead tree and plant materials (that is obstructing pedestrian movement), and brush; weeding and mowing. Natural watercourses are to be maintained as free-flowing and devoid of debris. Stream channels shall be maintained so as not to alter floodplain levels.
2. *Spacing and Dimensional Limitations.* In order to ensure that all designated open space has suitable size, location, dimension, topography and general character, and proper road and/or pedestrian access, as may be appropriate, to be usable open space, the following standards shall apply:
 - a. No residential lot shall be greater than one-fourth of a mile from required open space, measured along a sidewalk or trail from the nearest property line of the lot to the nearest property line of the open space.
 - b. Required open space shall have a minimum width of 25 feet.
 - c. The percentage of required open space comprised of inaccessible land shall be a maximum of 25%.
 - d. A maximum of 10% of the overall required active open space shall be located in the flood plain.

- E. **Use of Stormwater Detention Basins.** Stormwater retention areas or detention basins which may be required as part of Section 5.02.14, Storm Drainage, shall not qualify as an open space area. These areas shall be considered inaccessible open space.
- F. **Required Materials.** Subdividers shall provide finish grading and turf establishment for all disturbed areas and provide landscaping and/or screening.
- G. **Minimum Open Space Per Lot Calculation.** Of the required open space, a minimum of .025 acres per dwelling unit shall be provided as active open space for all subdivisions. For example, a subdivision containing 100 dwelling units shall be required to provide 2.5 acres of active open space for the development (.025 x 100 lots = 2.5 acres). Active open space shall be considered a part of the overall open space required for the development.
- H. **Access to Open Space.**
 - 1. *Required Pedestrian Access.* All areas to be preserved for open space be accessible to pedestrians by one of the following:
 - a. Frontage (width as required in this Section) on a public street right-of-way; or
 - b. Recorded pedestrian easement (min. 15' wide); or
 - c. Additional Pedestrian Access Points. Upon review of the design by the Director, additional pedestrian access points may be required.
- I. **Dedication of Open Space.** When dedicating open space to the Town, it must be accepted through means in Section 5.05.

5.02.15 Markers and Monuments

- A. **Generally.** The subdivider's registered professional land surveyor shall provide reference monuments and markers in the subdivision, based on National Geodetic Vertical Datum (NGVD).
- B. **Permanent Markers.** The surveyor shall install permanent markers at all corners of block lines, control points, and at the point of intersection of curves and tangents. Such markers shall be iron rods or pipes of magnetic quality a minimum of three-fourths of an inch in diameter and 36 inches in length. The surveyor shall place the rod flush with the finished grade, at the required locations.
- C. **Concrete Monuments.** The surveyor shall install one benchmark for each 10 acres of property, in a manner suitable to the Director of Public Works, with its location and elevation as shown on the approved and recorded final plat. Permanent benchmarks shall be concrete posts five feet in length and six inches in diameter with the top to be at least 12 inches below the finished grade.
- D. **Lot Markers.** The surveyor shall install a permanent marker at each corner of all lots. Such marker shall be an iron rod a minimum of one-half inch in diameter and 24 inches in length. The surveyor shall place each rod flush with the average ground elevation, or the rod may be countersunk, if necessary, to avoid being disturbed.
- E. **Control Points.** Control points are any property corner of any tract, parcel or lot which is not square or rectangular.

§ 5.03 Subdivision Types

5.03.01 Generally

This section details the types of subdivisions permitted within the Town of Black Mountain.

5.03.02 Conventional

- A. **Minor Subdivision.** A minor subdivision is defined as the division of a tract or parcel of land where:
1. No new public streets or roads are proposed (except for private driveway easements with each driveway serving no more than three lots);
 2. No part of the tract or parcel to be divided has been divided under this section in the previous ten years; and
 3. No more than four lots will result from the division.
 4. The resultant lots shall conform with all requirements of this land use code.
 5. The minor subdivision process shall be used only where the subdivision includes all contiguous land under the ownership of the applicant and where the resultant lots will not constitute a new phase of an existing development.
 6. The minor subdivision process is not intended to permit the avoidance of improvements, infrastructure or other standards imposed for major subdivisions. Therefore, when an application for minor subdivision approval is made by an applicant who has previously obtained minor subdivision approval for an adjacent parcel of land in the previous two years, the application shall be treated as an application for, and conform to the requirements of, a major subdivision as set forth below.
- B. **Major Subdivision.** Any subdivision of land, other than an exempt, family, or minor subdivision, is a major subdivision subject to review and approval as provided below.
- C. **Exempt Subdivision.** Pursuant to NCGS §160D-802, a subdivision plat shall not be required for any of the following:
1. *Combination or Recombination.* The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the City as shown in this UDO.
 2. *Large Parcels.* The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.
 3. *Public Acquisition.* The public acquisition by purchase of strips of land for the widening or opening of streets.
 4. *Minor Division.* The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this UDO.
 5. *Probated Will.* The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under NCGS Chapter 29.
 6. *Plat for Recordation.* Only a plat for recordation for the division of a tract or parcel of land in single ownership is required if all of the following criteria are met:
 - a. **Not Otherwise Exempted.** The tract or parcel to be divided is not otherwise exempted by this Section;
 - b. **No Previous Division.** No part of the tract or parcel to be divided has been divided under this Section in the 10 years prior to division;
 - c. **Large Parcels.** The entire area of the tract or parcel to be divided is greater than five acres;
 - d. **Few Lots.** After division, no more than three lots result from the division; and
 - e. **Conformity with UDO.** After division, all resultant lots comply with all of the following:
 - i. Any lot dimension and size requirements of this UDO;

- ii. The use of the lots is in conformity with the applicable zoning district; and
 - iii. A permanent means of ingress and egress is recorded for each lot.
- D. **Family Subdivision.** The Director may allow the creation of up to three additional lots in a calendar year period from an existing lot of record at the effective date of this UDO.
 - 1. *Approval Process.* The Family Subdivision shall be approved by the Minor Subdivision process outlined in [Chapter 8](#).
 - 2. *Total Number of Lots.* No more than seven lots from the original parcel may be approved under the provisions of this ordinance by the Director. The lots created under this subsection shall meet the following requirements:
 - a. Each lot that does not front on a public Street shall be connected to a public Street by a minimum 50 foot recorded easement upon which the lot has a minimum of 50 feet of frontage on the easement;
 - b. Not more than three lots shall be created which have sole frontage on any one easement. Any required setbacks shall be measured from the easement; and
 - c. Each easement shall originate with a connection to a public street and no easement shall be longer than 500 feet when measured from the public street.
 - 3. *Denial of a Family Subdivision.* The Director may disapprove a final plat of a Family Subdivision if it is found that the creation of the subdivision is intended to circumvent the purpose and intent of this ordinance.

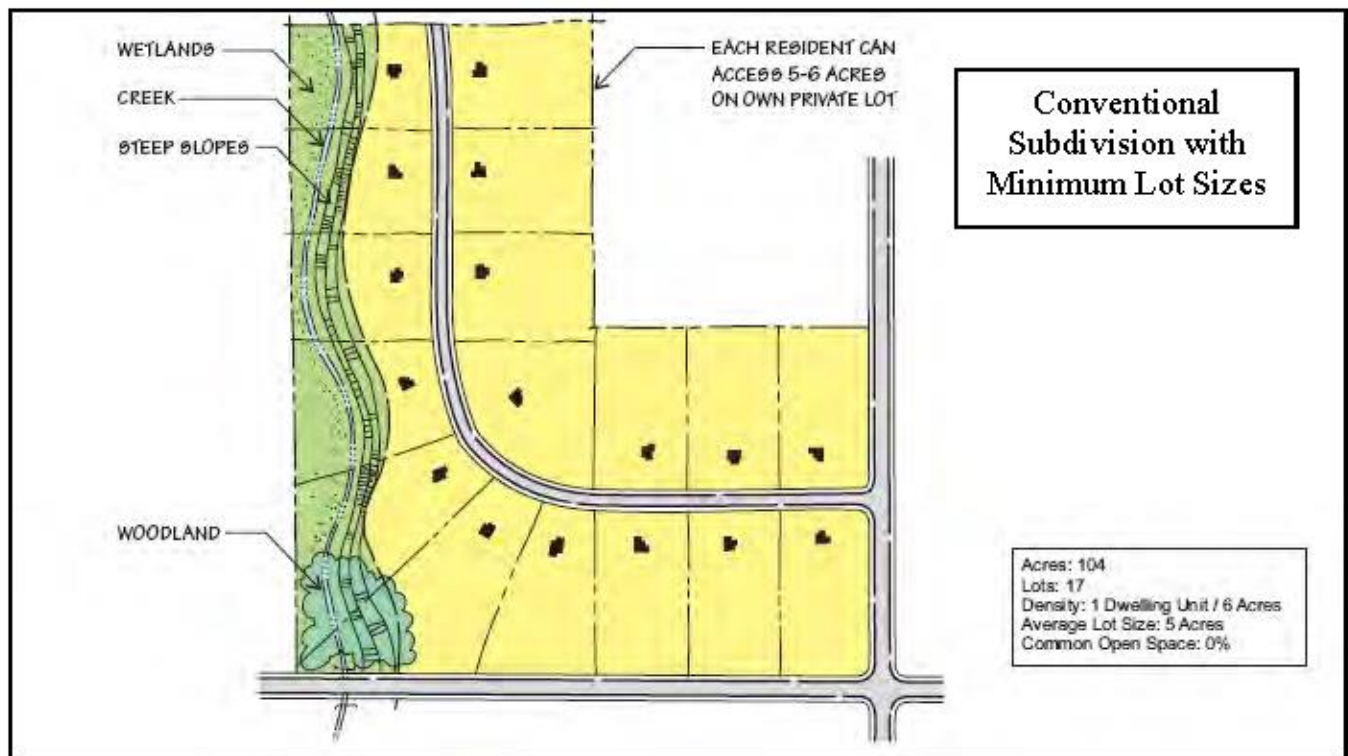
5.03.03 Conservation

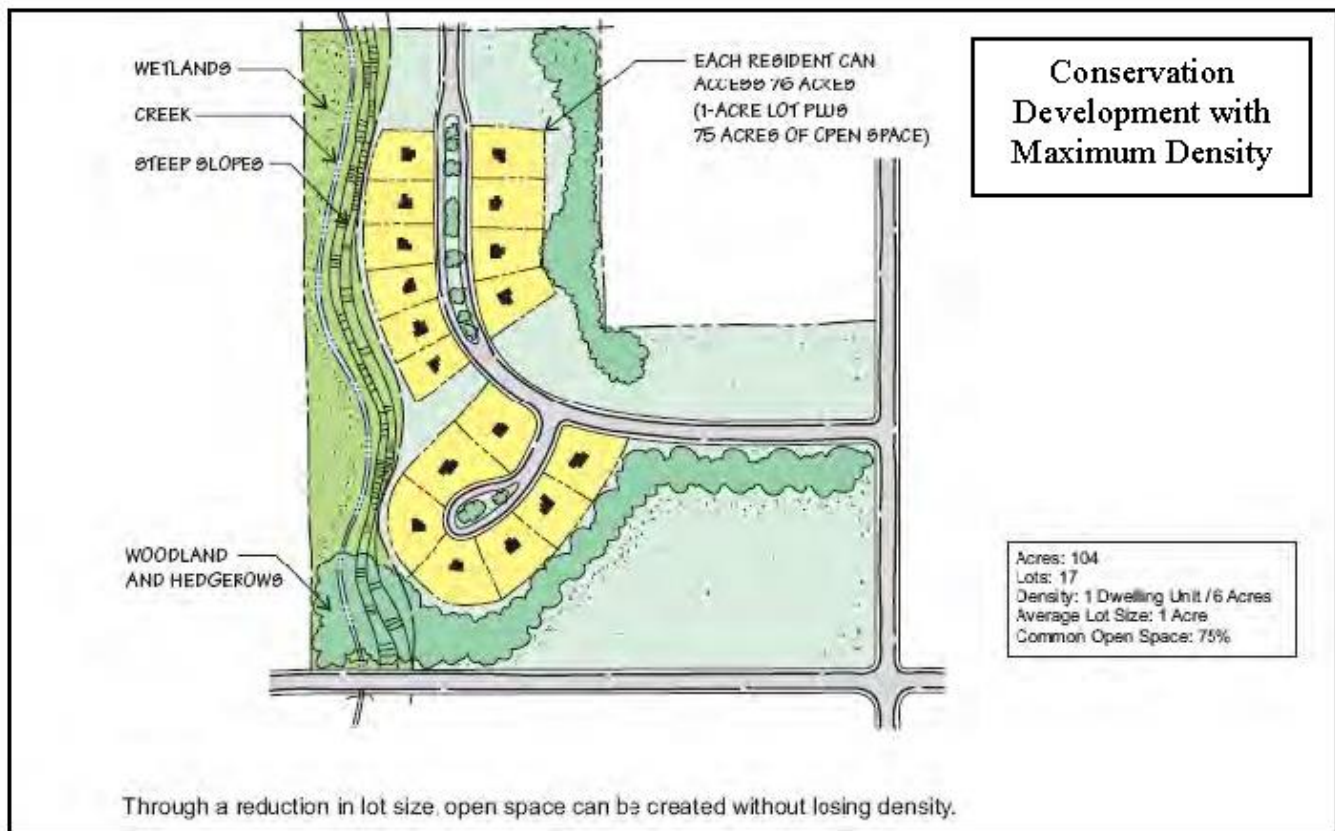
- A. **Purpose.** The purpose of a conservation subdivision is to provide flexibility in subdivision design in order to protect the natural landscape, mountain ecology, and view-shed of the Town of Black Mountain.
- B. **Applicability.** This subdivision option may be applied in any subdivision and in any zoning district in which conservation subdivisions are permitted, which the original tract or total of assembled tracts is one acre or more.
- C. **Density, Lot Sizes, and Setbacks.**
 - 1. Conservation subdivision plans meeting the requirements of this chapter shall be allowed twice the density permitted per acre under the density table for steep slopes in the erosion prevention and slope protection ordinance (applicable to lots of 25 percent slope or greater) and shall be exempt from the minimum lot size. Under no circumstances however shall the gross density of a conservation subdivision exceed the density for the district in which it is located or as allowed by the inclusionary housing allowance.
 - 2. Yard setbacks are not required within the development but must be maintained on the perimeter of the project boundary.
 - 3. Building sites, including accessory buildings, must be established based on the site capacity analysis which identifies the areas for construction with the most stability and the least amount of land disturbance, while preserving environmentally sensitive areas.
 - 4. Lot sizes may vary from the minimum lot size of the district in which the subdivision is located so long as the overall density of the district is maintained and any reduction in the area of individual lots is provided in a minimum of equal area dedicated as common open space as part of the master plan. This allowance shall apply to single-family and zero-lot-line construction.
 - 5. Within and adjoining established residential districts, a ten-foot setback from the side and rear property lines must be preserved.

- D. **Performance Goals.** A conservation subdivision plan is a "performance-based" development plan that is flexible in its requirements as long as the following goals are achieved:
1. Environmentally sensitive areas are left undisturbed, including:
 - a. Any slope greater than 45 degrees, exceeding a 1:1 slope or 100 percent slope.
 - b. Wetlands, bogs and natural drainages.
 - c. Perennial and intermittent streams with a 30-foot protective buffer on both sides.
 - d. Significant landscape features. Significant landscape features may include rock outcroppings, trees with diameter at breast height (DBH) of two feet or more, or other landscape characteristics which are unique to the site, rare in the area, or which are visually or biologically unusual.
 - e. Stormwater run-off is managed in such a way as to conform to the natural hydrology of the site and resulting in run-off that is equal to or less than the pre-development conditions. Low impact development ("LID") is the preferred stormwater design strategy that seeks to maintain or replicate the pre-development hydrology of a site by using design techniques to create a functionally equivalent hydrologic landscape. The strategy seeks to maintain the functions of storage, infiltration, and groundwater recharge, as well as the volume and frequency of discharges by the use of integrated and distributed micro-scale stormwater retention and detention areas, reduction of impervious surfaces, and the lengthening of flow paths and runoff time.
 - f. Colluvial soils are avoided.
 - g. No more than 33 percent of total land area is disturbed in the development process,
 - h. Buildings, driveways and roads are located in the most stable areas for construction and along contours that require the least amount of land disturbance and cut-and-fill.
 - i. Native plants existing on the site pre-development are minimally disturbed and native plants occurring naturally on the site are also incorporated into post-construction landscaping.
 - j. When adjoining or located within established residential districts, a ten-foot setback from the side and rear property lines must be preserved.
 - k. A site analysis which indicates how the master plan addresses the six goals above and documents the pre-development and post-development stormwater run-off conditions.
- E. **General Design Requirements.** In addition the requirements for a master plan required by this chapter, the following design requirements shall be conservation developments:
1. An LID analysis of the natural hydrology and how the stormwater management plan is consistent with that hydrology. This analysis should include calculations for run-off based on the amount of impervious surface proposed, and how the run-off will be managed on-site.
 2. The disturbed area does not exceed 33 percent of the total tract area, and the location and footprint of buildings and roads are located in such a way as to minimize impact for the particular site.
 3. The plan meets or exceeds the overall density requirements of the district in which it is located.
 4. Buildings may not be more than 35 feet in height from the highest adjacent grade. A building may not exceed 45 feet in height on any one side.
 5. The subdivision development, including roads and buildings, shall be designed to meet the standards of the town's insurance rating as determined by the town's fire marshal.
 6. All roads must follow pre-disturbance land contours in order to minimize cut and fill to the greatest extent possible. Designs with bifurcated, one-way, or variable travel widths may be included within the plan if periodic turnouts, one-way loops, bifurcations, or other designs are applied that allow for staging and passing of public vehicles.

7. Dead-end streets or culs-de-sac are allowed as long as turn-around areas are provided and meet the requirements as indicated in the Town of Black Mountain Standards and Details Manual.
8. All rights-of-way must be established to allow for adequate drainage of road surface run-off as indicated in the Town of Black Mountain Standards and Details Manual.
9. Predominant native species located on the site are identified and lawns and grassed areas are minimized in favor of maintaining or replacing native vegetation existing on the site pre-development.
10. Stormwater, ridge top, and conservation easements or maintenance areas are established and designated.
11. Pedestrian facility requirements may be met with hiking trails and/or reduced or waived at the discretion of the board of adjustment if the inclusion of these facilities would negatively impact the land or site hydrology. Greenway or other trails may be used to meet open space requirements.
12. Areas identified for potential well head locations, or if necessary, for required drainage fields, are included in the master plan.

For more information on **Low Impact Development**, including fact sheets and reference materials, see the Environmental Protection Agency website at:
<http://www.epa.gov/owow/nps/lid/>





§ 5.04 Adequate Public Facilities Standards

5.04.01 General Standards

- A. **Purpose.** The purpose of this Section 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 rezoning.
- 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.

5.04.02 Criteria for Determination of Adequacy

- A. **Generally.** Public Facilities shall be deemed to be adequate if it is demonstrated that they have Available Capacity to accommodate the demand generated by the proposed development in accordance with the following calculation methodology, unless otherwise indicated herein.
- B. **Water.** Water requirements shall not apply to agricultural uses. Adequate water availability shall be determined by the service provider.
- C. **Wastewater.** The wastewater standard applies to wastewater treatment plants (WWTPs), interceptor sewers, and pumping stations. The standard for source facilities applies only to treatment capacity legally reserved for usage by the service provider.
- D. **Roads.**
 1. *Generally.* New development, redevelopment, changes in use, or expansions to existing developments that are likely to result in additional peak hour or daily vehicular trip generation (compared to the existing condition) in excess of the thresholds set out below, shall submit a traffic impact study according to the methodologies set out below.
 2. *Thresholds.* The following minimum thresholds require a traffic study:
 - a. Additional average daily trips generated by the development exceed 500 trips per day, as determined by the *ITE Trip Generation* manual.
 - b. Additional PM peak trips generated by the development exceed 100 trips per hour, as determined by the *ITE Trip Generation* manual.
 - c. Any residential development that exceeds 150 new dwelling units.
 - d. The development will cause the adjacent streets or closest intersection(s) to operate at a reduced Level of Service.
 - e. The adjacent street or closest intersection(s) already operates at LOS F.
 3. *Methodologies.* Traffic studies shall be prepared by a licensed professional engineer qualified to perform such work.
 4. *Updated Traffic Study Required.* The Director may require an update (amendment) to a previous traffic study or a new study if any of the following thresholds are met:
 - a. Changes to the development proposal increases expected trip generation for daily or peak hour trips by more than 15 percent from the original study;
 - b. The previous traffic studies are more than two years old, unless the Director has determined that the conditions have not significantly changed; or
 - c. Location, types and/or number of access points for the development has changed.
 5. *Conditions of Approval.* The Planning Board may condition the approval of proposed development on the maintenance of the level of service standards for streets that will be impacted by the development and may authorize phased development that ties required street, intersection, access, signalization, or other improvements (such as, but not limited to additional signage, pavement markings, acceleration/deceleration lanes, etc.) necessary to maintain LOS or improve safety to the timing and level of development proposed for each phase.

§ 5.05 Public Improvements Dedication and Acceptance

5.05.01 Dedication of Improvements

- A. **General.** All dedications shall be indicated on the face of the plat. Verbose dedications may be accomplished by a separate recorded instrument which is referenced on the face of the plat.
- B. **Acceptance by Town Council.**
1. Improvements within rights-of-way, open space or easements, such as utility lines, street paving, drainage facilities or stormwater BMPs, sidewalks or trails may be accepted for maintenance by the Town upon approval by the town council.
 2. The Town Council shall not accept as a public street, any street extension, new street or part thereof until preliminary plans have been approved by the Director, Public Works Director, and Fire Marshal, and unless the street or part thereof has met the following requirements:
 - a. A street dedication petition signed by all owners of property over which the street or right-of-way passes is filed with the planning department.
 - b. The road meets all requirements as indicated in the Town of Black Mountain Standards and Details Manual.
 - c. Where necessary, property owners must be willing to purchase approved culverts to install under new constructed driveways.
 - d. The road must be approved by the public works director and the fire marshal upon inspection.
 - e. The Planning Department shall forward the street dedication request to the Town Council for approval.

5.05.02 Installation and Guarantees

- A. **When Required.** Installation and dedication of all improvements shall be made prior to final plat approval unless financially guaranteed.
- B. **Guarantee of Completion.** The Town may enter into an agreement with the subdivider whereby the subdivider shall agree to complete all required improvements as specified on the approved preliminary plat, for that portion of the subdivision to be shown on the final plat, within a reasonable time to be determined in said agreement. To secure this agreement, the subdivider shall provide a guarantee not exceeding 1.25 times (or 125 percent of) the entire cost of the improvements in the form of a performance bond, cash or equivalent security, or a letter of credit.
1. *Surety Performance Bonds.* These shall be obtained from a surety bonding company authorized to do business in North Carolina. The bond(s) shall be payable to the Town of Black Mountain and shall be in an amount equal to 1.25 times the entire cost, as estimated by an engineer of installing all required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat. The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. A developer shall demonstrate reasonable, good-faith progress toward completion of the required improvements that are secured by the performance guarantee or any extension. If the performance guarantee is likely to expire prior to completion of the required improvements, the performance guarantee shall be extended, or a new performance

guarantee issued, for an additional period. An extension shall only be for the duration necessary to complete the required improvements.

2. *Cash or Equivalent Security.* The subdivider shall deposit cash or other instrument readily convertible into cash at face value, either with the town or in escrow with a financial institution designated as an official depository of the town. The amount of the deposit shall be equal to 1.25 times the cost, as estimated by, an engineer of installing all required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat. The subdivider shall file with the town an agreement between the financial institution and himself guaranteeing that:
 - a. An escrow account shall be held in trust until released by the acting subdivision administrator and may not be used or pledged by the subdivider in any other matter during the term of the escrow; and
 - b. In the case of a failure on the part of the subdivider to complete improvements, the financial institution shall, upon notification and submission by the town board to the institution of the amount needed to complete improvements, either pay to the town the funds needed to complete the improvements, up to the full balance of the escrow account, or deliver to the town any other instruments fully endorsed or otherwise made payable in full to the town.
3. *Letter of Credit.* A satisfactory, irrevocable letter of credit as approved by the town attorney and deposited with the town clerk shall be submitted, containing the following information:
 - a. Indication that the Town of Black Mountain is the sole beneficiary;
 - b. The amount (of the letter of credit) as approved;
 - c. Account number and/or credit number that drafts may be drawn on;
 - d. List of improvements that shall be built that the letter is guaranteeing;
 - e. Terms in which the town may make drafts on the account;
 - f. Expiration date of the letter.
- C. **Default.** Upon default, meaning failure on the part of the subdivider to complete the required improvements in a timely manner as spelled out in the agreement, then the surety, or the financial institution holding the escrow account shall, if requested by the town, pay all or any portion of the bond or escrow fund to the Town of Black Mountain up to the amount needed to complete the improvements based on the estimate. Upon payment, the town board, in its discretion, may expend such portion of said funds as it deems necessary to complete all or any portion of the required improvements. The town shall return to the surety or escrow account any funds not spent in completing the improvements.
- D. **Release.** The Town Council may release a portion of any security posted as the improvements are completed and recommended for approval by the subdivision administrator. At such time as the Town Council approves all improvements placed in the subdivision, all security posted shall be immediately released.

5.05.03 Acceptance

The Town may accept streets for ownership and maintenance one year after the completion date of the final road surfacing. Application for street acceptance must be made in writing approved by the public works director and fire marshal. This is under the following parameters:

- A. Land designated as open space on a final plat shall be dedicated to a neighborhood association or other entity, or shall be considered to be offered for dedication to the town. The town may accept control of the open space through:
- B. Express action by the town council;

- C. Approval of the final plat with areas specifically dedicated to the Town of Black Mountain for the purpose of open space, park and/or greenway development as accepted by the town council; or
- D. Conveyance of fee simple marketable title (unencumbered financially and environmentally) to the property to the town at the time of final plat recordation, subject to approval by the town council.
- E. Until such time as the dedication has been accepted, land so offered may be used for open space purposes and be maintained by the underlying or abutting property owner or similarly by an owners' association. Land so offered for dedication shall not be used for any purpose inconsistent with the proposed public use.
- F. The town council may, prior to approving the final plat or otherwise accepting dedication of land, request review by the recreation and parks commission before making their determination. Dedications should meet the following criteria:
 - A. Unity. Dedicated area shall form a single parcel of land, except where the town council determines that two or more parcels or a linear easement across multiple parcels would be in the best interest of the public given the type and distribution of space needed to serve the development. In such cases, the council may require that such parcels be connected by a dedicated strip of land or access easement be at least 20 feet in width.
 - B. Usability. At least on-half of the total land dedicated shall be located outside of areas of special flood hazard, alluvial soils, lakes or other water bodies, and at least 75 percent of the total land dedicated shall be located outside of wetlands. Land dedicated only for greenways need not follow the requirements of this subsection.
 - C. Shape. Dedicated land shall be sufficiently shaped and proportional to be usable for proposed recreational facilities and activities, such as greenways, athletic fields, playground area, tennis courts, swimming pools, etc.
 - D. Access. Public access to dedicated land shall be provided by adjoining street frontage or by a dedicated public easement which connects the dedicated land to a public street or right-of-way, or from adjacent property, as determined by the town council.
 - E. Greenway dedications shall be a minimum of 15 feet in width.



CHAPTER 6: ENVIRONMENTAL MANAGEMENT

Contents:

- § 6.01 Flood Damage Prevention and Hazard Reduction
- § 6.02 Wellhead Protection
- § 6.03 Erosion Prevention and Slope Protection
- § 6.04 Phase II Stormwater
- § 6.05 Illicit Discharge
- § 6.06 Stream Buffers

§ 6.01 Flood Damage Prevention and Hazard Reduction

6.01.01 Statutory Authorization

The North Carolina General Assembly has delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare. The Town of Black Mountain regulates Flood Damage Prevention through this chapter accordingly.

6.01.02 Statement of Purpose and Disclaimer

- A. **Generally.** The flood prone areas within the jurisdiction of the Town of Black Mountain are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B. **Cause.** These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.
- C. **Purpose.** It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:
 - 1. Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
 - 2. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
 - 3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
 - 4. Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
 - 5. Prevent or regulate the construction of flood barriers that will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- D. **Objectives.** The objectives of this ordinance are to:
 - 1. Protect human life, safety, and health;

2. Minimize expenditure of public money for costly flood control projects;
 3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 4. Minimize prolonged business losses and interruptions;
 5. Minimize damage to public facilities and utilities (i.e., water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in floodprone areas;
 6. Help maintain a stable tax base by providing for the sound use and development of floodprone areas; and
 7. Ensure that potential buyers are aware that property is in a special flood hazard area.
- E. **Compliance.** No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

6.01.03 Applicability

The special flood hazard areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Buncombe County dated January 6, 2010, are adopted by reference and declared to be a part of this ordinance.

The initial flood insurance rate maps are as follows for the jurisdictional areas at the initial date:

Town of Black Mountain, dated April 15, 1980

Buncombe County, dated August 1, 1980

6.01.04 Methods of Reducing Flood Losses

- A. **General Standards.** In all special flood hazard areas the following provisions are required:
1. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
 2. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 3. All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
 4. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the regulatory flood protection elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
 5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
 6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
 7. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

8. Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance.
 9. Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
 10. New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified.
 11. All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
 12. All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
 13. All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
 14. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
 15. When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.
 16. When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest base flood elevation shall apply.
- B. **Specific Standards.** In all special flood hazard areas where Base Flood Elevation (BFE) data has been provided, the following provisions are additionally required:
1. *Residential Construction.* New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in this UDO.
 2. *Non-Residential Construction.* New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in article 2 of this ordinance. Structures located in A, AE, AO, and A1—30 zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator along with the operational plan and inspection and maintenance plan.
 3. *Manufactured Homes.*

- a. New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation.
 - b. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the commissioner of insurance pursuant to G.S. 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.
 - c. All enclosures or skirting below the lowest floor shall meet the requirements of this UDO.
 - d. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the floodplain administrator and the local emergency management coordinator.
4. *Elevated Buildings.* Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
- a. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
 - b. Shall be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation; and
 - c. Shall include, in zones A, AE, and A1—30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
 - i. A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 - ii. The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;
 - iii. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - iv. The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;
 - v. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
 - vi. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.
5. *Additions/Improvements.* Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

- a. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure.
 - b. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
 - c. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
 - d. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - i. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
 - ii. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
6. *Recreational Vehicles.* Recreational vehicles shall either:
- a. Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
 - b. Meet all the requirements for new construction.
7. *Temporary Non-Residential Structures.* Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval:
- a. A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;
 - b. The name, address, and phone number of the individual responsible for the removal of the temporary structure;
 - c. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 - d. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
 - e. Designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.
8. *Accessory Structures.* When accessory structures (sheds, detached garages, etc.) are to be placed within a special flood hazard area, the following criteria shall be met:
- a. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 - b. Accessory structures shall not be temperature-controlled;
 - c. Accessory structures shall be designed to have low flood damage potential;
 - d. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - e. Accessory structures shall be firmly anchored;
 - f. All service facilities such as electrical shall be installed; and

- g. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation.
 - h. An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures.
- C. **Standards for Floodplains Without Established Base Flood Elevations.** Within the special flood hazard areas designated as approximate zone A and established in article 3, section B, where no base flood elevation (BFE) data has been provided by FEMA, the following provisions shall additionally apply:
- 1. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 20 feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
 - 2. The BFE used in determining the regulatory flood protection elevation shall be determined based on the following criteria:
 - a. When base flood elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in this UDO.
 - b. When floodway or non-encroachment area data is available from a federal, state, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of this UDO.
 - c. All subdivision, manufactured home park and other development proposals shall provide base flood elevation (BFE) data if development is greater than five acres or has more than 50 lots/manufactured home sites. Such base flood elevation (BFE) data shall be adopted by reference in accordance with article 3, section B and utilized in implementing this ordinance.
 - d. When base flood elevation (BFE) data is not available from a federal, state, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the regulatory flood protection elevation, as defined.
- D. **Standards for riverine floodplains with base flood elevations but without established floodways or non-encroachment areas.** Along rivers and streams where base flood elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a special flood hazard area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:
- 1. Standards of Section 6.02; and
 - 2. Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- E. **Floodways and Non-Encroachment Areas.** Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in this UDO. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in 6.02, shall apply to all development within such areas:

1. No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
 - a. It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the floodplain administrator prior to issuance of floodplain development permit; or
 - b. A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained upon completion of the proposed encroachment.
2. If the above is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
3. No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
 - a. The anchoring and the elevation standards of this UDO are met; and such engineering is to be certified.
 - b. The no encroachment standard of this UDO.
4. No vegetative debris such as wood piles, downed trees or branches which could cause blockage of culverts or bridges or which could otherwise create a hazard during a flood event shall be permitted to accumulate within the floodway areas.
5. No discarded or store items such as abandoned vehicles, other goods, tires, or miscellaneous debris shall be allowed to accumulate within the floodway areas.

6.01.05 General Standards

- A. **Designation of Floodplain Administrator.** The Building Official or his/her designee hereinafter referred to as the "Floodplain Administrator" is hereby appointed to administer and implement the provisions of this ordinance.
- B. **Floodplain Development Permit.** A floodplain development permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within special flood hazard areas.
- C. **Floodplain Development Application, Permit, and Certification Requirements.**
 1. *Application Requirements.* Application for a floodplain development permit shall be made to the floodplain administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the floodplain administrator to apply for a floodplain development permit:
 - a. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - i. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 - ii. The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in [6.01.03](#), or a statement that the entire lot is within the special flood hazard area;
 - iii. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in [6.01.03](#);

- iv. The boundary of the floodway(s) or non-encroachment area(s) as determined in [6.01.03](#);
 - v. The base flood elevation (BFE) where provided as set forth in this UDO;
 - vi. The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
 - vii. The certification of the plot plan by a registered land surveyor or professional engineer.
- b. Proposed elevation, and method thereof, of all development within a special flood hazard area including but not limited to:
 - i. Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - ii. Elevation in relation to mean sea level to which any non-residential structure in zones AE, A or AO will be floodproofed; and
 - iii. Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
 - c. If floodproofing, a floodproofing certificate (FEMA form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.
 - d. A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
 - i. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
 - ii. Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with [6.01.04](#) when solid foundation perimeter walls are used in zones A, AE, and A1—30.
 - e. Usage details of any enclosed areas below the lowest floor.
 - f. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
 - g. Certification that all other local, state and federal permits required prior to floodplain development permit issuance have been received.
 - h. Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of [6.01.04](#) of this ordinance are met.
 - i. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.
2. *Permit Requirements.* The floodplain development permit shall include, but not be limited to:
- a. A description of development to be permitted under the floodplain development permit.
 - b. The special flood hazard area determination for the proposed development in accordance with available data specified in [6.01.03](#).
 - c. The regulatory flood protection elevation required for the reference level and all attendant utilities.
 - d. The regulatory flood protection elevation required for the protection of all public utilities.
 - e. All certification submittal requirements with timelines.

- f. A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
 - g. The flood openings requirements, if in zones A, AE or A1—30.
 - h. Limitations of below BFE enclosure uses if applicable. (i.e., parking, building access and limited storage only).
3. *Certification requirements.*
- a. Elevation certificates.
 - i. An elevation certificate (FEMA form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
 - ii. An elevation certificate (FEMA form 81-31) is required after the reference level is established. Within seven calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
 - iii. A final as-built elevation certificate (FEMA form 81-31) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.
 - b. Floodproofing certificate. If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

- c. If a manufactured home is placed within zones A, AE, or A1—30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of [6.01.04](#).
 - d. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- 4. Certification exemptions. The following structures, if located within zones A, AE or A1—30, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
 - a. Recreational vehicles meeting requirements in [6.01.04](#);
 - b. Temporary structures meeting requirements in [6.01.04](#); and
 - c. Accessory structures less than 150 square feet meeting requirements in [6.01.04](#).
- D. **Duties and responsibilities of the floodplain administrator.** The floodplain administrator shall perform, but not be limited to, the following duties:
 - 1. Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this ordinance have been satisfied.
 - 2. Review all proposed development within special flood hazard areas to assure that all necessary local, state and federal permits have been received.
 - 3. Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
 - 4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
 - 5. Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions in [6.01.04](#) are met.
 - 6. Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions above.
 - 7. Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions above.
 - 8. Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions above.
 - 9. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of this article.
 - 10. Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

11. When base flood elevation (BFE) data has not been provided, obtain, review, and reasonably utilize any base flood elevation (BFE) data, along with floodway data or non-encroachment area data available from a federal, state, or other source, including data developed pursuant to [6.01.04](#), in order to administer the provisions of this ordinance.
12. When base flood elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with this article, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other source in order to administer the provisions of this ordinance.
13. When the lowest grade floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a special flood hazard areas is above the base flood elevation, advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. Maintain a copy of the letter of map amendment issued by FEMA in the floodplain development permit file.
14. Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
15. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
16. Issue stop work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
17. Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.
18. Make periodic inspections throughout the special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
19. Follow through with corrective procedures below.
20. Review, provide input, and make recommendations for variance requests.
21. Maintain a current map repository to include, but not limited to, the FIS report, FIRM and other official flood maps and studies adopted in accordance with this section of this UDO, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.

22. Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMR).

E. Corrective procedures.

1. *Violations to be corrected:* When the floodplain administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
2. *Actions in event of failure to take corrective action:* If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - a. That the building or property is in violation of the floodplain management regulations;
 - b. That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
 - c. That following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
3. *Order to take corrective action:* If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the flood damage prevention ordinance, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.
4. *Appeal:* Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
5. *Failure to comply with order:* If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.
6. *Penalties for violation.* Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$25,000.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Black Mountain from taking such other lawful action as is necessary to prevent or remedy any violation.

F. Variance procedures.

1. The Board of Adjustment shall hear and decide requests for variances from the requirements of this ordinance pursuant to the process set forth in [8.04.02](#) of this UDO.
2. Variances may be issued for:
 - a. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and

- that the variance is the minimum necessary to preserve the historic character and design of the structure;
- b. Functionally dependent facilities if determined to meet the definition as stated in this UDO, provided provisions of this section have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
 - c. Any other type of development, provided it meets the requirements of this section.
3. In passing upon variances, the board of adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location as defined as a functionally dependent facility, where applicable;
 - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - k. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
 4. A written report addressing each of the above factors shall be submitted with the application for a variance.
 5. Upon consideration of the factors listed above and the purposes of this ordinance, the board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
 6. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the base flood elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
 7. The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
 8. Conditions for variances:
 - a. Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.

- b. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - d. Variances shall only be issued prior to development permit approval.
 - e. Variances shall only be issued upon:
 - i. A showing of good and sufficient cause;
 - ii. A determination that failure to grant the variance would result in exceptional hardship; and
 - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
9. A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met.
- a. The use serves a critical need in the community.
 - b. No feasible location exists for the use outside the special flood hazard area.
 - c. The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
 - d. The use complies with all other applicable federal, state and local laws.
 - e. The Town of Black Mountain has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

§ 6.02 Wellhead Protection

- A. **Purpose and Intent.** Wellhead Protection promotes the health, safety and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions and businesses of the Town of Black Mountain; preserves and protects the public, municipal water supply for the Town of Black Mountain; conserves the natural resources of the town; and prevents temporary and permanent contamination of the environment.
- B. **Scope.** Wellheads consist of aquifers or recharge areas which are delineated on a map entitled "Wellhead Protection Districts, Town of Black Mountain," dated 8-9-99, as the same may be amended from time to time. This map is hereby made a part of the town zoning regulations and is on file in the office of the zoning administrator.
- C. **District Boundary Disputes.**
 - 1. If the location of the district boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a special permit application to the board of adjustment. Any application for a special permit for this purpose shall be accompanied by adequate documentation.
 - 2. The burden of proof shall be upon the owner(s) of the land in question to show where the bounds should properly be located. At the request of the owner(s), the town may engage a professional engineer (civil or sanitary), hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the district with respect to individual parcels of land, and may charge the owner for all or part of the cost of the investigation.

D. Use Regulations.

1. *Permitted Uses.* The permitted uses, bulk and yard requirements within the wellhead protection overlay shall be those of the underlying zoning district, except as modified in subsection 2.
2. *Special Use Permit Required.* The following uses and structures which pose known groundwater contamination threats are permitted only upon issuance of a special use permit pursuant to the requirements of [2.04.07](#):
 - a. Use or production of hazardous substances in industrial, processing, manufacturing or commercial operations;
 - b. Any waste treatment or disposal activity requiring a permit under any of the following state regulations:
 - i. 15A NCAC 1E, Oil Refining Facility Permits;
 - ii. 15A NCAC 2H.0100, Point Source Discharges to Surface Waters;
 - iii. 15A NCAC 2H.0202, Waste Not Discharged to Surface Waters, including waste lagoons, spray and infiltration systems, and the land application and subsurface disposal of wastes, but excluding sewer system extension lines.
 - iv. 15A NCAC 5B, Mining: Mineral Resources;
 - v. 15A NCAC 5D, Oil and Gas Conservation;
 - vi. 15A NCAC 13A, Hazardous Waste Management Permits;
 - vii. 15A NCAC 13B, Solid Waste Management Permits, primarily landfills;
 - c. Animal feed lots;
 - d. Automobile junkyards;
 - e. Battery recycling and reprocessing;
 - f. Earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material to within six feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the U.S. Geological Survey, except for excavations for building foundations, roads, or utility works;
 - g. Impervious surfaces covering more than 15 percent of the lot;
 - h. Industrial and commercial uses which discharge processed wastewater on-site;
 - i. Manufacturing and production of paving, roofing, and other construction materials, using asphalt- and petroleum-based coating and preserving materials;
 - j. Primary and secondary metal industries that manufacture, produce, smelt, or refine ferrous and non-ferrous metals;
 - k. Retail gas stations and truck stops;
 - l. Septic tanks, unless used only for domestic waste and pumped out at least once every five years and are 1,200 gallons or less in size;
 - m. Storage of animal manure unless covered or contained in accordance with the specifications of the United States Natural Resources Conservation Service;
 - n. Storage or application of restricted use pesticides;
 - o. Wood-preserving operations using formulations of Chrome-Copper-Arsenate (CCC), pentachlorophenol (PENTA), creosote and related chemicals;
 - p. Underground storage tanks, unless equipped with secondary containment structures.

3. *Use List Not Exhaustive.* The uses prohibited pursuant to subsection 2. represent commonly occurring uses that pose known risks of contamination to groundwater. If a proposed use is known to pose similar risks of groundwater contamination.
4. *Changing Technology.* The uses prohibited by this district are prohibited based upon the combined pollution experience of many individual uses, and the technology generally employed by that class of uses, that causes the uses as a class to be groundwater pollution risks. As the technology of identified uses classes changes to non-risk materials or methods, upon petition from such a use, and after conferring with expert geological and other opinion, it is the intention to delete uses from the prohibited list, or allow them conditionally, those which demonstrate convincingly that they no longer pose a pollution hazard.
5. *Limited Exemptions.* The following activities or uses are exempt from the provisions of this section:
 - a. The transportation of any hazardous substance through a wellhead protection overlay district, provided the transporting vehicle is in transit;
 - b. The use of any hazardous substance solely as fuel in a vehicle fuel tank or as lubricant in a vehicle;
 - c. Retail sales establishments that store and handle hazardous substances for resale in their original unopened containers.
 - d. Office supplies that are used solely for the operation of on-site administrative offices, provided such supplies are prepackaged in a form ready for use.
 - e. Hazardous substances which are packaged for personal or household use and present in the same form and concentration as packaged for use by the general public. The aggregate inventory of such substances shall not exceed 100 gallons or 800 pounds at any time.
6. *Requirements for Existing Prohibited Uses.* All uses and structures specifically prohibited in this section may continue beyond the effective date of this ordinance only if, within 90 days after the effective date of this ordinance, the mayor and town council approve an operating and monitoring plan for each prohibited use or structure.

E. Plan Submission and Approval.

1. *Site plan requirements.* The following materials or information shall be provided on the site plan when it is submitted to the Public Works Director for review:
 - a. The location of public water supply wells within 1,000 feet of the site.
 - b. The location of adjacent (within 200 feet of a property line) private drinking water supply wells.
 - c. A complete list of the types and volumes of all hazardous substances (including fuels) used, stored, processed, handled or disposed, other than those volumes and types associated with normal household use.
 - d. Description of types of wastes generated and method of disposal including: solid wastes, hazardous wastes, sewage and non-sewage wastewater discharges.
 - e. Provisions for management of stormwater runoff.
2. *Operating and monitoring plan requirements.* At a minimum, an operating and monitoring plan (or "plan") shall contain the following elements, for approval by the town council:
 - a. General information.
 - b. Name, title and address of owner of the land on which the prohibited use or structure is located.
 - c. Name, title and address of the operator, authorized agent or other responsible person if different from the owner of the land.
 - d. Name of the business.

- e. Address of the prohibited use or structure.
 - f. Type of facility, operation or site.
 - g. Size of the prohibited use or structure, including, where applicable, lot acreage, square footage of any buildings, number of employees, etc.
 - h. Operating or performance standards.
 - i. The plan must specify under what standards the prohibited operation, facility or site will be operated or performed. These standards must ensure that all possible efforts are made to reduce the likelihood of contamination of the groundwater supply.
 - j. If any state or federally promulgated environmental protection standards exist for a particular site, industry, business, facility or operation, then the plan must specify what those standards are, and how they will be implemented.
 - k. If no state or federally promulgated standards exist, or in addition to such standards, the plan must indicate what the most current best management practices (BMP) are for that particular site, industry, business, facility or operation and how those best management practices will be implemented.
 - l. Monitoring provisions.
 - m. If state or federal laws, rules or regulations require groundwater monitoring by a particular site, industry, business, facility or operation then the plan must specify what those requirements are and how they will be implemented.
 - n. If no state or federal laws, rules or regulations require groundwater monitoring by a particular site, industry, business, facility, or operation, then the plan must specify by whom, by what method, where and how frequently the groundwater under the property will be monitored.
 - o. Reporting schedule.
 - p. The owner/operator of any prohibited use or structure shall submit a report to the zoning administrator annually summarizing the monitoring results for the year, including any contamination that may have occurred and the remedies that were undertaken to protect the groundwater.
 - q. No annual report is required for septic tanks or impervious surfaces located within wellhead protection overlay districts. These uses will be allowed to continue indefinitely, although no future expansion will be allowed, provided that the other requirements of this section are met.
 - r. Performance bond. The owner/operator of any prohibited use or structure is required to engage an accredited performance bondsman to ensure complete compliance with the terms of the approved operation, monitoring and amortization plan. The plan must specify the name and address of the bondsman, as well as the amount of the insurance obtained.
 - s. Other requirements. Additional requirements may be imposed if further protection of the town's groundwater supply to the public well system is warranted, including groundwater monitoring beyond the amortization period specified in the plan. Factors which shall be considered include but are not limited to the toxicity of the substance, the amount of the substance, proximity of the condition to the well, soil conditions, topography and other factors pointing to the degree of risk posed to the public water supply.
3. *Approval process for operating and monitoring plans.*
- a. Plan submission. The owner or developer shall submit ten copies of the operating and monitoring plan to the public works director for consideration by the town council.

- b. Plan review. The public works director shall review the operating and monitoring plan and prepare a recommendation for the town council, based on the plan's compliance to the regulations specified in this ordinance and the potential threat to the town's public water supply. The recommendation shall be made within 30 calendar days of the plan's submission date.
- c. Before approving an operating and monitoring plan, the town council shall first hold a public hearing. Staff shall place notification of the public hearing in a newspaper of general circulation within the Town of Black Mountain once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Meeting notice shall include the time and place of hearing.
- d. Staff shall prominently post a notice of the public hearing on the site of the proposed area or on an adjacent public street or highway right-of-way. Staff shall provide notice by first class mail to all property owners within 200 feet of the property boundary of the proposed area and the date of the public hearing. Notice shall also be posted to the town website indicating the date and time of the hearing.

§ 6.03 Erosion Prevention and Slope Protection

- A. **Purpose.** The purpose of this chapter is to protect, maintain and enhance the environment of the Town of Black Mountain and the health, safety and public welfare of its citizens by establishing minimum requirements concerning land disturbance and to control the potential adverse effects of erosion and sedimentation.
- B. **Applicability.**
 - 1. This chapter is applicable to all development and redevelopment within the Town of Black Mountain's jurisdiction.
 - 2. Grading permits shall be required whenever 5,000 square feet or more of land is disturbed. The addition of impervious surface of 5,000 square feet or more or of a cumulative land disturbance of land of 12,000 square feet or more shall also require a town stormwater permit.
 - 3. Grading shall mean any manipulation of the ground forms including, but not limited to cutting of trees with excavation of stumps or any other earth-disturbing activities; provided, (a) that installation of utilities in an area with a topographical change of not more than five percent where the area disturbed is not wider than 18 inches (including ditch and spill areas); and (b) that creation of stormwater drainage and erosion control ditches except when the ditch is located in an existing natural drainage channel and the only improvement is the lining of the channel with rock, shall not be considered grading.
 - 4. For any area designated as a "steep slope", land disturbance shall mean any use of, or operations on, the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. However, the cutting of scattered individual trees, the removal of fallen trees and the removal of undesirable non-native or invasive vines, shrubs and plants will be allowed.
 - 5. Any grading or other land disturbing activity within the floodplain shall be reviewed by the Floodplain Administrator to determine applicability of floodplain regulations and associated permits.
- C. **Cut and Fill Slopes.**
 - 1. Property being developed within the Town of Black Mountain shall not exceed the following specifications for cut and fill:

- a. Cut slopes shall not exceed a ratio of greater than 1:1 (horizontal distance to vertical distance, or a 45 degree slope angle, or 100 percent grade); and
 - b. Fill slopes shall not exceed a ratio of greater than 1.5:1 (horizontal distance to vertical distance, or a 33 degree slope angle, or 66 percent grade).
2. Roads exceeding 15 percent grade and proposed for dedication to the town as public streets shall include roadway design and engineering with benching or other stabilization techniques as part of the site plan and shall include a town maintenance easement to the toe of the slope.
3. All cut and fill slopes shall be hydro-seeded or landscaped within 30 days of achievement of final grade and all temporary roads and slopes shall not be left exposed for more than a 45-day period.
4. Retaining walls greater than five feet in height must be designed and sealed by an engineer and approved by the Building Official.

Notes on Slope:

Slope is the measurement of "rise" in vertical distance in relation to horizontal distance, or "run." Slope ratio is expressed as horizontal distance (to): vertical distance

% slope is calculated as:
$$\frac{\text{Vertical Distance}}{\text{Horizontal Distance}} \times 100$$

1:1 slope (or 45 degree slope angle) = 100%

1.5:1 slope (or 33 degree slope angle) = 66% slope*

2:1 slope (or 26.6 degree slope angle) = 50% slope

3:1 slope (or 18 degree slope angle) = 33.5% slope

4:1 slope (or 14 degree slope angle) = 25%

6.5:1 slope (or 8.7 degree slope angle) = 15% slope

Without using more advanced stabilization techniques, the maximum slope to be considered for vegetative stabilization is 1.5:1.

D. Sedimentation and Erosion Control.

1. Any land disturbance permitted under Buncombe County's Soil Erosion and Sedimentation Control Office must be documented before any grading activity may take place. Buncombe County enforces the state "Sedimentation Pollution Control Act of 1973" for the Town of Black Mountain and regulates certain land disturbing activities for the purpose of controlling accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, water courses and other public and private property by sedimentation.

2. Land disturbing activity or grading in connection with development or redevelopment on a site that requires a building permit, and that does not fall under the Sedimentation and Pollution Control Act of 1973, such as that under one acre of land, shall comply with the following requirements:
 - a. A written or graphic concept plan of the proposed soil and sedimentation controls during construction shall be submitted with the grading permit. Concept plan shall include identification of areas of land disturbance within the site and the location of proposed temporary and permanent soil erosion and sedimentation control measures designed to retain sediment on-site.
 - b. Land disturbing activity shall not take place within twenty-five feet of a stream or otherwise result in a violation of rules adopted by the state environmental management commission to protect riparian buffers along state surface waters. In accordance with state and local stormwater management regulations, no built-upon area shall be within 30 feet of a stream.
 - c. Land disturbing activity shall not result in a violation of any local regulations including but not limited to zoning district requirements and floodplain regulations.
 - d. Erosion control measures in compliance with the approved plan and building permit shall be in place before construction may begin. Failure to comply will result in a stop work order.
 - e. Any required permanent erosion control measures or landscaping shall be in place before grading permit is issued or shall be bonded at 125 percent of the estimated cost for implementation of the landscaping plan. Measures and landscaping shall be in place within 45 days of final grade.

E. Designation of Steep Slopes and Hillside Requirements.

1. Steep slope and hillside regulations apply to any subdivision or development that meets the following criteria:
 - a. A development or redevelopment project or subdivision located on a parcel greater than one acre and in which the average of the natural slope for the entire parcel is 16 percent or greater; or
 - b. A development or redevelopment project or subdivision of a parcel less than one acre in which the average natural slope of 25 percent or greater; or
 - c. A development or redevelopment project or subdivision, where 50 percent or more of the subdivision lies at or above elevations of 2,600 feet above mean sea level or greater.
2. Any portion of the lot, parcel, or tract of land which has been approved by the planning department or planning board as a minor or major subdivision or special use permit prior to the adoption of this section, or developed prior to the adoption of this section, or any lot pre-existing before the adoption of this section, shall not be subject to the minimum lot size requirement as stated in this chapter. Subsequent phases of, or additions to, a minor or major subdivision or special use permit, as well as approved subdivision projects where the site plan has been changed, or approved subdivisions where the lot design has changed, shall indicate the proposed contours, limit and area of grading, and percentage of the site to be graded and shall comply with the requirements of these regulations.
3. Slope calculations shall use the smallest contour interval for which maps are available or at a minimum of five-foot intervals, and shall be determined based on the tract to be subdivided, irrespective of proposed subdivision boundaries if part of a minor or major subdivision. The average slope is calculated using the following formula:

$$S\% = \frac{0.0023 \times I \times L}{A}$$

Where:

S = Average natural slope of parcel or lot in percent

I = Contour interval of map in feet, with contour intervals to be five feet or less

L = Total length of the contour lines within the parcel or lot in feet

A = Area of the parcel or lot in acres

0.0023 = Constant which converts square feet into acres

4. Property owners may submit an alternate method of slope calculation for consideration based on the peculiarities of the site and prepared by a member of the American Society of Landscape Architects (ASLA), Professional Engineer (P.E.), Professional Land Surveyor or be a qualified environmental scientist. These methods may include, but are not limited to, weighted average, slope mapping, or other field-based techniques, etc.
5. Once "S" or the average natural percent slope of the tract is calculated, it shall be rounded off to the nearest whole number on the density and lot size table, as set forth hereinafter, which shall be used to determine the maximum number of lots or units allowed.
6. In addition to the application requirements submitted for review, proposed projects which meet the standards of the hillside area definition must include the following information:
 - a. Average natural slope calculations which include the average natural slope in percent, contour intervals of five feet or less, individual and total length of contour lines in feet and area of the parcel in acres;
 - b. Subdivision for the purpose of conservation in perpetuity may allow developers to subtract areas for conservation from the total acreage used to calculate average slope of the original lot.
 - c. Areas exceeding 16 percent slope shall be indicated on all site plans, development plans, preliminary plats, and special use permit plan applications.
 - d. Soils maps shall be submitted if available from the natural resource conservation service (NRCS) and deposits of known colluvial soils shall be located on the site plan.
 - e. Consultation with a geotechnical engineer shall be required for road, driveway, or home construction in areas of a tract in excess of 36 percent natural slope and an investigation for colluvial deposits shall be made. Recommendations of the geotechnical engineer shall be submitted with the application for review by staff or by the planning board if part of a major subdivision or special use permit application.
 - f. Homesites on a 36-percent or greater slope shall include a global stability analysis with the building permit.
 - g. Homesites on a 25-percent or greater slope must conform to the following density table in addition to the minimum zoning requirements. Conservation subdivision plans shall be allowed twice the density permitted per acre under the Density Table for Steep Slopes in the erosion prevention and slope protection ordinance (applicable to lots of 25 percent slope or greater) and shall be exempt from the minimum lot size. Under no circumstances however shall the gross density of a conservation subdivision exceed the density for the district in which it is located.
 - h. Wherever the minimum lot size for the district and the density table are in conflict, the regulation of the greatest lot size shall apply:

DENSITY TABLE FOR STEEP SLOPES

SLOPE %	UNITS PER ACRE	MINIMUM LOT IN ACRES
25	1.250	0.80
26	1.064	0.94
27	0.926	1.08
28	0.820	1.22
29	0.735	1.36
30	0.667	1.5
31	0.625	1.6
32	0.588	1.7
33	0.556	1.8
34	0.526	1.9
35	0.500	2.0
36	0.476	2.1
37	0.455	2.2
38	0.435	2.3
39	0.417	2.4
40	0.400	2.5
41	0.385	2.6
42	0.370	2.7
43	0.357	2.8
44	0.345	2.9
45	0.333	3.0
46	0.323	3.1
47	0.313	3.2
48	0.303	3.3
49	0.294	3.4
50	0.286	3.5
51	0.278	3.6
52	0.270	3.7
53	0.263	3.8
54	0.256	3.9
55	0.250	4.0
56	0.217	4.6
57	0.192	5.2
58	0.172	5.8
59	0.156	6.4
60	0.143	7.0
61	0.132	7.6

62	0.122	8.2
63	0.114	8.8
64	0.106	9.4
65	0.100	10

7. Development and subdivision plans shall be designed to minimize disturbance to the natural landform and demonstrate terrain-adaptive design and construction techniques. Extensive grading shall be avoided and low impact development ("LID") techniques which meet the town's stormwater requirements are required.
8. On any tract greater than one acre proposed for subdivision or construction, no more than 50 percent of the tract shall be graded or disturbed.
9. Streets, rights-of-way, pedestrian facilities and setbacks shall be designed to minimize impact on steep slope areas of the particular site without compromising the town's ability to provide connectivity, street maintenance, waste management, or fire protection, and must be designed to the approval of the town's fire marshal and public works director. Street standards may be allowed a staff variance of up to 20 percent (up to eight feet variation on right-of-way requirements, and up to 4.8 feet variation on total travel surface requirements), based on topography, traffic and public safety needs. Subdivisions complying with the conservation subdivision plan requirements (chapter 13) do not have to meet the setback requirements for the zoning district. However, the location and lay-out of streets, lots buildings, and pedestrian facilities should minimize environmental impact.
10. Whenever a major subdivision of ten acres or more must comply with steep slope and hillside regulations, the subdivider must apply for a conservation subdivision special use permit as provided in [Chapter 5](#).
11. No land disturbing permit shall be issued for a site plan or a subdivision which meets the standards set forth in the definition of hillside area until the site plan review and subdivision plat review have been completed.

§ 6.04 Phase II Stormwater

- A. **Generally.** The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment as well as illicit discharges into municipal stormwater systems. It has been determined that proper management of post-development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.
- B. **Purpose.** The ordinance seeks to meet the requirements for the town's National Pollutant Discharge Elimination System (NPDES) Permit.
- C. **Objectives.** This ordinance seeks to meet its general purpose through the following specific objectives and means:
 1. Establishing decision-making processes for development that protect the integrity of watersheds and preserve the health of water resources;
 2. Requiring that new development and redevelopment maintain the predevelopment hydrologic response in their post-development state as nearly as practicable for the applicable design storm to reduce

flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;

3. Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
4. Establishing design and review criteria for the construction, function, and use of structural stormwater SCMs that may be used to meet the minimum post-development stormwater management standards;
5. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
6. Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater SCMs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
7. Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance.
8. Coordinating site design plans that include open space with the subdivision ordinance requirements for open space with the zoning administrator or planning board if required.
9. Assigning responsibility and processes for approving the creation and maintenance of adequate drainage measures.

D. Applicability and Jurisdiction.

1. *General.* Beginning with and subsequent to its effective date, this ordinance shall be applicable to all development and redevelopment occurring in within the corporate limits of the Town of Black Mountain, unless exempt below.
2. *Activity threshold requiring a stormwater permit.* A stormwater permit is required for any development and redevelopment which results in a increases impervious surface area by a net amount of 5,000 square feet or more Projects developed under a common plan creating more than 5,000 square feet of impervious surface, regardless of the number of parcels included in the plan.
3. All phased developments must achieve post-construction requirements at the completion of each phase unless otherwise approved by the stormwater administer.

E. Exemptions.

1. Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.
2. Development which cumulatively disturbs less than 5,000 square feet of land and is not part of a larger common plan of development does require a stormwater permit.
3. Pre-existing development or development activities that do not remove or decrease existing stormwater controls shall not be required to install new or increased stormwater controls.
4. When a pre-existing development is redeveloped, either in whole or in part, increased stormwater controls shall only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before redevelopment.
5. Development activities within the town's designated historic district.

- F. No Development or Redevelopment until Compliance and Permit.** No development or redevelopment shall occur except in compliance with the provisions of this ordinance unless exempted. No development for

which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

- G. **Map.** The stormwater map shall be kept on file by the stormwater administrator and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all structural SCMs permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or SCM shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

H. **Interpretation.**

1. *Meaning and intent.* All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth above and also defined below. If a different or more specific meaning is given for a term defined elsewhere in Town of Black Mountain Code of Ordinance, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.
2. *Text controls in event of conflict.* In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control
3. *Authority for interpretation.* The stormwater administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the stormwater administrator, who shall respond in writing within 30 days. The stormwater administrator shall keep on file a record of all written interpretations of this ordinance.
4. *References to statutes, regulations, and documents.* Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the design manual), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.
5. *Computation of time.* The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town of Black Mountain, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town of Black Mountain. References to days are calendar days unless otherwise stated.
6. *Delegation of authority.* Any act authorized by this Ordinance to be carried out by the Planning Director of Town of Black Mountain may be carried out by his or her designee as Stormwater Administrator.

I. **Design Manual.**

1. *Reference to design manual.* The stormwater administrator shall use the policy, criteria, and information, including technical specifications and standards, in the design manual as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and non-structural stormwater SCMs. The design manual includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.
2. *Relationship of design manual to other laws and regulations.* If the specifications or guidelines of the design manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the design manual.
3. *Changes to standards and specifications.* If the standards, specifications, guidelines, policies, criteria, or other information in the design manual are amended subsequent to the submittal of an application for

approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

4. *Amendments to design manual.* The design manual may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience. Prior to amending or updating the design manual, proposed changes shall be generally publicized and made available for review, and an opportunity for comment by interested persons shall be provided.

J. Relationship to other Laws, Regulations and Private Agreements.

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

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

L. Effective Date and Transitional Provisions.

1. *Effective date.* This section took effect on December 1, 2019.
2. *Final approvals, complete applications.*
 - a. All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Black Mountain prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of development or redevelopment shall be exempt from complying with all provisions of this ordinance dealing with management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions. If previously approved SCMs are not maintained as approved and regulated by the stormwater ordinance in effect at the time of their approval, such LCMs must be made to comply with this ordinance to the greatest extent possible when repaired or brought into compliance.
 - b. A phased development plan shall be deemed approved prior to the effective date of this ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:
 - i. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.
 - ii. For any subsequent phase of development, sufficient detail so that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.

3. *Violations Continue.* Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, development, construction, or other activity complies with the provisions of this ordinance.

M. Administration and Procedures

1. *Review Procedures.*
 - a. *Appointing a Stormwater Administrator.*
 - i. Powers and Duties. In addition to the powers and duties that may be conferred by other provisions of the Town of Black Mountain Code of Ordinances and other laws, the stormwater administrator shall have the following powers and duties under this ordinance:
 - (A) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
 - (B) To make determinations and render interpretations of this ordinance.
 - (C) To enforce the provisions of this ordinance in accordance with its enforcement provisions.
 - (D) To maintain records, maps, forms and other official materials as related to the adoption, amendment, enforcement, and administration of this ordinance.
 - (E) To provide expertise and technical assistance to the Town of Black Mountain Town Council, upon request.
 - (F) To designate appropriate other person(s) who shall carry out the powers and duties of the stormwater administrator.
 - (G) To take any other action necessary to administer the provisions of this ordinance.
 - ii. Designation. A stormwater administrator shall be designated by the planning director to administer and enforce this ordinance in whole or in part, at the planning director's discretion.
 2. *Permit required; must apply for permit.*
 - a. A stormwater permit is required for all development and redevelopment unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section. A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including structural SCMs and elements of site design for stormwater management other than structural SCMs.
 - b. The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this ordinance, whether the approach consists of structural SCMs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.
 3. *Authority to file applications.* All applications required pursuant to this Code shall be submitted to the stormwater administrator by the land owner or the land owner's duly authorized agent.
 4. *Establishment of application requirements, schedule, and fees.* Application contents and form. The stormwater administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-development stormwater runoff will be controlled and

managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.

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

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

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

with the approved stormwater management plans and designs, and shall submit actual "as built" plans for all stormwater management facilities or practices after final construction is completed.

- e. The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the stormwater administrator shall occur before the release of any performance securities.
 - f. Other permits. No certificate of compliance or occupancy shall be issued by the building inspector without final as-built plans and a final inspection and approval by the stormwater administrator, except where multiple units are served by the stormwater practice or facilities, in which case the building inspector may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.
14. *Approvals.*
- a. Effect of approval. Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.
 - b. Time limit/expiration.
 - i. An approved plan shall become null and void if the applicant fails to make substantial progress on the site within one year after the date of approval. The stormwater administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.
 - ii. In granting an extension, the stormwater administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.
15. *Appeals.* Right of appeal. Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the stormwater administrator, may file an appeal to the board of adjustment within 30 days.

N. Standards.

- 1. *General standards.* All development and redevelopment to which this ordinance applies shall comply with the standards of this section.
- 2. *Development standards for all permitted projects.*
 - a. High and low density projects shall comply with each of the following standards requiring a stormwater permit:
 - i. Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.
 - ii. Project sites must employ low impact development (LID) practices to analyze the infiltration capacity of natural drainage of the site and develop a system of controls which mimic the existing, natural hydrology and which cumulatively capture and treat the runoff from the first inch of rainfall. LID practice may include any combination of site design techniques, and SCMs to store, infiltrate, evaporate, retain and detain runoff on the site to more closely

replicate the pre-development runoff thereby limiting the increase in pollutant loads caused by development.

- iii. All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B.0233 (3)(a) or similar site-specific determination made using Division-approved methodology. Encroachment allowances may be made as described herein.
 - b. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.
 - c. The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
 - d. All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85 percent average annual removal for total suspended solids (TSS);
 - e. General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H.1008(c), as explained in the design manual.
3. *Standards for stormwater control measures.* Owners of property subject to this ordinance and required to install structural stormwater control measures shall implement those measures in compliance with each of the following standards:
- a. Evaluation according to contents of design manual. All stormwater control measures and stormwater treatment practices (also referred to as Stormwater Control Measures, or SCMs) required under this ordinance shall be evaluated by the stormwater administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the design manual. The stormwater administrator shall determine whether proposed SCMs will be adequate to meet the requirements of this ordinance. It is presumed that all standards in the design manual will result in a minimum of 85 percent average annual removal of total suspended solids.
 - b. Determination of adequacy; presumptions and alternatives. Stormwater treatment practices that are designed, and constructed, and maintained in accordance with the criteria and specifications in the design manual will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the design manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The stormwater administrator may require the applicant to provide the documentation, calculations, and examples necessary for the stormwater administrator to determine whether such an affirmative showing is made.
 - c. Whenever LID practices are not achievable, or have not been demonstrated, the measures controlling the final runoff from the site shall control and treat the difference in stormwater runoff

volume leaving the project site between pre and post-development conditions for a minimum rate of ten year, 24-hour storm as determined by NOAA.

- d. Peak stormwater runoff rates shall be controlled for all development at or exceeding 24 percent built upon area or high density projects as defined by this ordinance, for both LID and conventional approaches. The peak stormwater runoff release rates leaving the site during post-construction conditions shall be equal to or less than the pre-development peak stormwater runoff release rates for the one-year frequency, 24-hour duration storm event as determined by NOAA data for Black Mountain. The emergency overflow and outlet works for any pond or wetland constructed as a stormwater SCM shall be capable of safely passing a discharge with a minimum recurrence frequency of 50 years. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.
 - e. No single SCM shall receive runoff from an area greater than three acres, however the total drainage area from SCMs used in a series may exceed this maximum.
 - f. In addition to the standards for handling stormwater set out in the design manual, development and redevelopment that drains in whole or part to trout waters (class TR) waters shall design and implement the best stormwater practices that do not result in a sustained increase in receiving water temperature, while still meeting the other requirements of this ordinance.
 - g. In addition to the standards for stormwater handling set out in the design manual, development and redevelopment that drains in whole or part to nutrient sensitive waters (class NSW) shall design and implement the best stormwater practices that reduce nutrient loading, while still meeting the other requirements of this ordinance.
 - h. Separation from seasonal high water table. For SCMs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.
- O. **Variances.** Any person may petition the Town of Black Mountain for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. The Town of Black Mountain may impose reasonable and appropriate conditions and safeguards upon any variance it grants. To qualify for a variance, the petitioner must show all of the following:
- 1. Unnecessary hardships would result from strict application of this ordinance.
 - 2. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 - 3. The hardships did not result from actions taken by the petitioner.
 - 4. The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.
- P. **Statutory Exceptions.** Exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:
- 1. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.
 - 2. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface

waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.

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

Q. Onsite Wastewater.

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

R. Maintenance.

1. *General standards for maintenance of SCMS.*
 - a. Function of SCMs as intended. The owner of each structural SCM installed pursuant to this ordinance shall maintain and operate the device(s) in accordance with the approved Operation and Maintenance Plan to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural SCM was designed.
 - b. Single family and duplex maintenance inspection and report. SCMs installed to meet the needs of this ordinance shall submit to the stormwater administrator an inspection report every three years from either a NC professional engineer or landscape architect. The inspection report shall contain all of the following:
 - i. The name and address of the landowner;
 - ii. The recorded book and page number of the lot of each structural SCM;
 - iii. A statement that an inspection was made of all structural SCMs;
 - iv. The date the inspection was made;
 - v. A statement that all inspected structural SCMs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
 - vi. The original signature and seal of the engineer, or landscape architect.
 - c. Residential developments and commercial properties annual maintenance inspection and report. The person responsible for maintenance of any structural SCM installed pursuant to this ordinance shall submit to the stormwater administrator an inspection report from either a NC professional engineer or landscape architect., The inspection report shall contain all the following:

- i. The name and address of the landowner;
 - ii. The recorded book and page number of the lot of each structural SCM;
 - iii. A statement that an inspection was made of all structural SCMs;
 - iv. The date the inspection was made;
 - v. A statement that all inspected structural SCMs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
 - vi. The original signature and seal of the engineer, surveyor, or landscape architect.
- d. All inspection reports shall be on forms supplied by the stormwater administrator. An original inspection report shall be provided to the stormwater administrator beginning one year from the date of as-built certification and, annually thereafter.
2. *Operation and maintenance agreement.*
- a. The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural SCM, and shall state the terms, conditions, and schedule of maintenance for the structural SCM. In addition, it shall grant to Town of Black Mountain a right of entry in the event that the stormwater administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural SCM; however, in no case shall the right of entry, of itself, confer an obligation on Town of Black Mountain to assume responsibility for the structural SCM. The operation and maintenance agreement must be approved by the stormwater administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county register of deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the stormwater administrator within 14 days following its recordation. Special requirement for homeowners' and other associations. For all structural SCMs required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:
- i. A provision indemnifying and holding harmless the Town of Black Mountain for any costs and injuries arising from or related to the structural SCM, unless the Town of Black Mountain has agreed in writing to assume the maintenance responsibility for the SCM and has accepted dedication of any and all rights necessary to carry out that maintenance.
 - ii. A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Black Mountain to enforce any of its ordinances as authorized by law.
 - iii. A statement that this agreement shall not obligate the Town of Black Mountain to maintain or repair any structural SCMs, and the Town of Black Mountain shall not be liable to any person for the condition or operation of structural SCMs.
 - iv. Allowing the Town of Black Mountain to recover from the association and its member's any and all costs the Town of Black Mountain expends to maintain or repair the structural SCMs or to correct any operational deficiencies. Failure to pay the Town of Black Mountain all of its expended costs, after 45 days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Black Mountain shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.

- v. Granting to the Town of Black Mountain a right of entry to inspect, monitor, maintain, repair, and reconstruct structural SCMs.
- vi. The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Black Mountain depending on the design and materials of the stormwater control and management facility.
- vii. Two-thirds of the total amount of sinking fund budget shall be deposited into the escrow account within the first five years and the full amount shall be deposited within ten years following initial construction of the structural SCMs. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.
- viii. Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to 15 percent of the initial construction cost of the structural SCMs.
- ix. Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural SCMs. If structural SCMs are not performing adequately or as intended or are not properly maintained, the Town of Black Mountain, in its sole discretion, may remedy the situation, and in such instances the Town of Black Mountain shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural SCMs, provided that the Town of Black Mountain shall first consent to the expenditure.
- x. Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- xi. Prior to the conveyance or transfer of any lot or building site to be served by a structural SCM pursuant to this ordinance, and prior to issuance of any permit for development or redevelopment requiring a structural SCM pursuant to this ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural SCM. Until the transference of all property, sites, or lots served by the structural SCM, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

3. *Inspection Program.*

- a. Inspections and inspection programs by Town of Black Mountain may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in SCMs; and evaluating the condition of SCMs.
- b. If the owner or occupant of any property refuses to permit such inspection, the stormwater administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or

its successor. No person shall obstruct, hamper or interfere with the stormwater administrator while carrying out his or her official duties.

4. *Performance security for installation and maintenance.*

- a. May be required. The Town of Black Mountain may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural SCMs are:
 - i. Installed by the permit holder as required by the approved stormwater management plan, and/or
 - ii. Maintained by the owner as required by the operation and maintenance agreement.
- b. Amount.
 - i. Installation. The amount of an installation performance security shall be the total estimated construction cost of the SCMs approved under the permit, plus 25 percent.
 - ii. Maintenance. The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the SCMs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.
- c. Uses of performance security.
 - i. Forfeiture provisions. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.
 - ii. Default. Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structure SCM in accordance with the applicable permit or operation and maintenance agreement, the stormwater administrator shall obtain and use all or any portion of the security to make the necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Black Mountain shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.
- d. Costs in excess of performance security. If Town of Black Mountain takes action upon such failure by the applicant or owner, the Town of Black Mountain may collect from the applicant or owner the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.
- e. Refund. Within 60 days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25 percent) of landscaping installation and ongoing maintenance associated with the SCMs covered by the security unless a separate landscaping and ongoing maintenance security has been provided. Any such landscaping shall be inspected one year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

5. *Notice to Owners.*

- a. Deed recordation and indications on plat. The applicable operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable), pertaining to every structural SCM shall be referenced on the final plat and shall be recorded with the county register of deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable, shall be recorded with the county register of deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.
 - b. Signage. Where appropriate in the determination of the stormwater administrator to assure compliance with this ordinance, structural SCMs shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.
6. *Records of installation and maintenance activities.* The owner of each structural SCM shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the stormwater administrator.
 7. *Nuisance.* The owner of each stormwater SCM, whether structural or non-structural SCM, shall maintain it so as not to create or result in a nuisance condition.
 8. *Maintenance easement.* Every structural SCM installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

S. Enforcement and Violations for Compliance and Permits

1. *Authority to enforce.* The provisions of this ordinance shall be enforced by the stormwater administrator, or any authorized agent of Town of Black Mountain. Whenever this section refers to the stormwater administrator, it includes his or her designee as well as any authorized agent of Town of Black Mountain.
2. *Violation unlawful.* Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance. Each day a separate offense. Each day that a violation continues shall constitute a separate and distinct violation or offense.
3. *Responsible persons/entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, SCM, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs. For the purposes of this article, responsible person(s) shall include but not be limited to: Person maintaining condition resulting in or constituting violation. An architect, engineer, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

4. *Responsibility for land or use of land.* The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.
- T. **Remedies and Penalties.** The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.
1. *Remedies.*
 - a. Withholding of certificate of occupancy. The stormwater administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
 - b. Disapproval of subsequent permits and development approvals. As long as a violation of this ordinance continues and remains uncorrected, the stormwater administrator or other authorized agent may withhold, and the planning board may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the subdivision for the land on which the violation occurs.
 - c. Injunction, abatements, etc. The stormwater administrator, with the written authorization of the town manager, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
 - d. Correction as public health nuisance, costs as lien, etc. If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits of the Town of Black Mountain G.S. 160A-193, the stormwater administrator, with the written authorization of the town manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
 - e. Stop work order. The stormwater administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.
 2. *Civil penalties.* Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the stormwater administrator. Civil penalties may be assessed up to the full amount of penalty to which the Town of Black Mountain is subject for violations of its Phase II Stormwater permit, or if no Phase II Stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.
 3. *Procedures.*
 - a. Initiation/complaint. Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the stormwater administrator, who shall record the complaint. The complaint shall be investigated promptly by the stormwater administrator.

- b. Inspection. The stormwater administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.
- c. Notice of violation and order to correct. When the stormwater administrator finds that any building, structure, or land is in violation of this ordinance, the stormwater administrator shall notify, in writing, the property owner or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.
- d. The stormwater administrator may deliver the notice of violation and correction order personally, by the Code Enforcement staff, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.
- e. If a violation is not corrected within a reasonable period of time, as provided in the notification, the stormwater administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.
- f. Extension of time. A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the stormwater administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the stormwater administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The stormwater administrator may grant 60-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The stormwater administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.
- g. Enforcement after time to correct. After the time has expired to correct a violation, including any extension(s) if authorized by the stormwater administrator, the stormwater administrator shall determine if the violation is corrected. If the violation is not corrected, the stormwater administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.
- h. Emergency enforcement. If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the stormwater administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The stormwater administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

U. **Specific Definitions.** There are specific definitions pertaining to this section that should be read to understand the meaning of this section. When used in this section, the following words and terms shall have the meaning set forth in this section, unless other provisions of this ordinance specifically indicate otherwise:

- 1. Built-upon area (BUA): That portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads,

parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

2. Department: The North Carolina Department of Environment and Natural Resources.
3. Design manual: All references herein to the Design Manual are to the latest published edition or revision as published by the North Carolina Department of Environmental Quality.
4. Development: Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.
5. Division: The Division of Water Quality in the Department.
6. Larger common plan of development or sale: Any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.
7. Low impact development: The term low impact development (LID) refers to systems and practices that use or mimic natural processes that result in the infiltration, evapotranspiration or use of stormwater in order to protect water quality and associated aquatic habitat. LID is an approach to land development (or re-development) that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product. There are many practices that have been used to adhere to these principles such as bio retention facilities, rain gardens, vegetated rooftops, rain barrels and permeable pavements.
8. 25 year, 24-hour storm: The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 25 years and with a duration of 24 hours as defined by the National Weather Service.
9. Owner: The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition, such as a management entity.
10. Post-construction: The point in which construction activity has been concluded prior to issuing a certificate of occupancy or otherwise putting the property into use.
11. Redevelopment: Any development on previously-developed land, other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater storm water control than the previous development.
12. Stormwater Control Measure (formally known as Best Management Practice): An alternation of land or physical device engineered and/or designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of

these goals. Structural SCM includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural SCM" is synonymous with "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this ordinance.

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

§ 6.05 Illicit Discharge

A. Purpose.

1. The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of illicit discharges into municipal stormwater systems. It has been determined that proper management of stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.
2. The section seeks to meet the requirements for the town's National Pollutant Discharge Elimination System (NPDES) Permit.

B. **Applicability and Jurisdiction.** The following ordinance regarding illicit discharges and connections to public stormwater water system applies to all parcels in the incorporated area of the Town of Black Mountain.

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

D. **Effective Date.** This section took effect on December 1, 2019.

E. Illicit Discharges and Connections.

1. *Illicit discharges.*
 - a. No person shall cause or allow the direct-piping of untreated waste water, discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the state, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the state, any liquid, solid, gas, or other substance, other than stormwater. Prohibited substances include but are not limited to oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.
 - b. Non-stormwater discharges associated with the following activities are allowed provided that they do not significantly impact water quality:
 - i. Water line flushing;
 - ii. Landscape irrigation;
 - iii. Diverted stream flows;

- iv. Rising ground waters;
 - v. Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
 - vi. Uncontaminated pumped ground water;
 - vii. Discharges from potable water sources;
 - viii. Foundation drains;
 - ix. Air conditioning condensation;
 - x. Irrigation water;
 - xi. Springs;
 - xii. Water from crawl space pumps;
 - xiii. Footing drains;
 - xiv. Lawn watering;
 - xv. Individual residential car washing;
 - xvi. Flows from riparian habitats and wetlands;
 - xvii. Dechlorinated swimming pool discharges;
 - xviii. Street wash water; and
 - xix. Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by Town of Black Mountain.
2. *Illicit Connections.* Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in subsection above, are unlawful.
- a. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.
 - b. Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.
 - c. Where it is determined that said connection:
 - i. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
 - ii. Was made in violation of any applicable regulation or ordinance, other than this section; the stormwater administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the stormwater administrator shall take into consideration:
 - (A) The quantity and complexity of the work,
 - (B) The consequences of delay,

- (C) The potential harm to the environment, to the public health, and to public and private property, and
 - (D) The cost of remedying the damage.
- 3. *Spills.* Spills or leaks of polluting substances released, discharged to, or having the potential to released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition. Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the fire chief of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by state or other law.

F. Violations and Enforcement.

- 1. *Violations continue.* Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance.
- 2. *Notice of violation and enforcement.* Illicit discharges and illicit connections which exist within the Town of Black Mountain are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in Chapter 20 of the Town of Black Mountain Code of Ordinances.

G. Other Prohibited Waste.

- 1. *Domestic animal waste.*
 - a. *Findings.* Pet waste is a serious water quality and public health issue for the Black Mountain community. Stormwater runoff washes bacteria, parasites, viruses, and nutrients from pet waste directly into our waterways. Poor water quality caused by pet waste can cause recreational swimming advisories, algal blooms, low dissolved oxygen levels, and impaired aquatic habitat. Fecal coliform bacteria, found in the feces of warm-blooded animals, can indicate that water is unsafe for human contact like fishing, swimming, and drinking. Many diseases can be spread to humans from pet waste as well. A strong pet waste ordinance encourages citizens to be responsible for cleaning up their animal's waste in order to keep our waterways clean and safeguard public health.
 - b. *Restrictions on domestic animal waste.*
 - i. No person in custody or control of any animal shall allow said animal to discharge any fecal matter on any public property unless the person in custody or control of said animal immediately and fully removes and disposes of the feces. Such public properties include, but are not limited to, streets, sidewalks, plazas, parks, rights-of-way, paths, public access areas, storm drains, ditches, streams, creeks, drainageways, other publicly owned property, and dedicated and officially accepted easements.
 - ii. It shall be unlawful for the owner or custodian of any animal to take it off its own property without the means to properly and immediately remove and dispose of the animal's feces from any public property. "Means to properly and immediately remove and dispose of the animal's feces" shall consist of having on one's person a device such as a plastic bag or other suitable "scooper," that can be used to fully clean up and contain the animal's waste until it can be deposited in a closed trash receptacle or other appropriate refuse container. Such a

device must be produced and shown upon request to anyone authorized to enforce this ordinance.

- iii. This provision shall not apply to a service animal accompanying a person with a disability or to an animal being used by law enforcement officers when doing so would prevent the officers from carrying out their official responsibilities.
- iv. "Public nuisance" is defined to include "any animal which deposits feces on public property when the person owning, possessing, harboring or having the care, charge, control, or custody of the animal fails to remove the feces so deposited.

H. Debris in stormwater drainage system.

1. *Findings.* Yard waste such as leaves, grass clippings, and soil/sediment can cause significant water quality problems when it is blown or directed into the stormwater system. Water quality problems include algal blooms and aquatic weed growth, oxygen depletion, fish kills, and impaired aquatic habitat. In addition, when the stormwater system is clogged with yard waste it can cause street and property flooding.
2. *Restrictions on debris.*
 - a. It shall be unlawful for any person to rake, sweep, blow, wash, direct or place any debris, including but not limited to yard waste, grass clippings, leaves, sediment, trash, or debris of any kind into the storm drainage system of the town, including any streets, storm drains, ditches, swales, streams, lakes, culverts, rights-of-way, dedicated easements, or in any other area where it might impede the flow of water through the storm drainage system of the town. A violation of section 8.4.8 shall constitute a civil penalty in the amount of \$50.00 a day, with each day being a separate and distinct violation.
 - b. It shall be the duty of all property owners within the town to take adequate precautions on their property to ensure positive drainage on their property. Such drainage may be provided either through natural or artificial drains found to be adequate by the public works director or his/her designee. The owner shall keep all ditches, drains, swales, and drainage routes free from obstructions which would impede the flow of water.
 - c. When it shall appear to the public works director or his/her designee that drainage facilities or drainageways on any private property are, for any reason, inadequate and prior notice has not resulted in correction of problem conditions, he shall notify the owner of the property by registered or certified mail what corrective measures are required to render the drainage adequate. The notice to the owner shall specify a reasonable time within which the corrective measures should be taken. Notice to the owner whose address is unknown shall be given to the person in whose name the property is listed for taxation at the address shown on the tax records or to the agent of the owner whose name appears upon the tax records.
 - d. If such corrective measures are not taken as required in the notice to the owner, the public works director or his/her designee, upon approval by the town council, may enter upon such premises and take the corrective measures required and the town council may assess the cost thereof against the owner of the property and such assessment shall become a lien on the property which shall be collected as a money judgment.
 - e. Any condition in violation of this section shall constitute a public nuisance, subject to abatement as set forth in section 1.10.8 of the land use code.
 - f. The following are preferred best management practices (BMPs) for yard waste and debris:
 - i. Prevent yard waste and debris from entering the street, storm drain, ditch, or other parts of the drainage system.

- ii. Direct or blow yard waste back onto a lawn or landscape area.
- iii. Sweep, rake, and/or collect yard waste instead hosing/sweeping off of driveways, sidewalks or other impervious surfaces.
- iv. Leave grass clippings on the lawn to decompose quickly and act as a natural fertilizer and soil conditioner ("grass cycle").
- v. Compost yard debris for use in the lawn, garden, or landscape.
- vi. Collect and contain yard waste for town collection service according to specific yard waste collection policies. Do not use the town trash cart for yard waste or debris.
- vii. Collect and dispose of waste at a legally authorized yard waste collection facility.

§ 6.06 Stream Buffers

- A. **Stream Buffer Protection Standards.** The primary objective of stream buffer protection standards is to maintain land adjacent to streams in an undisturbed vegetative state in order to enhance and maintain water quality, protect stream channel wetlands, minimize stormwater runoff, reduce sedimentation and erosion, conserve plant and wildlife habitat and protect wildlife movement corridors. The standards contained in this section will further this objective (1) by regulating water temperature through shading of the stream bed, (2) by limiting sedimentation from streambank erosion and stormwater flow, and (3) by supporting aquatic life through the provision of organic debris such as leaves and twigs.
- B. **Applicability and jurisdiction.** Except as modified in this section, stream buffer protection standards shall apply to all watercourses depicted as a solid blue line on the most recent USGS seven and one-half minute quadrangle topographic maps that cover the Town of Black Mountain. Stream buffers shall be clearly indicated on all development plans, including concept plans, preliminary plans and final plans, and on all preliminary and final plats.
- C. **Stream buffer size.** Stream buffers shall apply on each side of the stream and shall measure 30 feet horizontally from the top of the stream bank in a direction perpendicular to the stream flow.
- D. **Avoiding loss of effectiveness in protecting streams.**
 - 1. To avoid a loss of effectiveness in protecting streams, the stream buffer shall remain in natural undisturbed forest vegetation and no development or land-disturbing activities shall be undertaken therein except as provided herein.
 - 2. There shall be a 20-foot transitional area immediately landward of the stream buffer which may be graded, landscaped, and/or used for pedestrian or vehicular purposes so long as no impervious materials are utilized. Certain uses of land, as specified in section 20-385, below, may be permitted within the stream buffer so long as they meet the requirements of that section and are designed and constructed to minimize the amount of intrusion into the stream buffer and to minimize clearing, grading, erosion and water quality degradation.
 - 3. Nothing herein is intended to preclude the removal of downed vegetation from the stream bed in order to improve stream flow dynamics. If it is necessary to remove downed or dead vegetation, it should be cut and the root ball left in place to help maintain stability of the shoreline.
 - 4. Nothing herein is intended to [or shall] preclude any activity specifically authorized pursuant to section 401 and/or section 404 of the Clean Water Act.
- E. **Stream buffer protection measures.** To prevent adverse impacts to required stream buffer areas and to assure the stream buffer remains undisturbed and protected during and after land disturbing activities and development, adequate protections shall be in place prior to and after land disturbing activities and development commences.

1. When land disturbing activity or development is to take place within 50 feet of the outside edge of the stream buffer, temporary stream buffer protective barriers shall be in place prior to the land disturbing activity or development work commencing.
2. Prior to commencing any land disturbing activity or development on a site, the planning director or his/her designee shall inspect and approve the installation of stream buffer protective barriers.
3. Stream buffer protective barriers shall consist of:
 - a. A fence which is at least three feet high and constructed in a post and rail configuration, using two-by-four posts and one-by-four rails.
 - b. A fence with two-by-four posts placed no farther than ten feet apart covered with a four-foot orange polyethylene laminar safety fencing; or
 - c. Certain erosion and sedimentation control devices such as silt fencing may also serve as the stream buffer protective barrier.
4. All contractors shall be made aware of the stream buffer designated for protection. Unless otherwise provided by ordinance, no disturbance shall occur within the stream buffer including the following:
 - a. Clear-cutting of trees and other vegetation;
 - b. Selective cutting of trees and/or the clearing of other vegetation;
 - c. Removal or disturbance of existing vegetation;
 - d. Grading;
 - e. Filling;
 - f. Storage, parking or operating motorized vehicles;
 - g. Storage of debris or materials, including topsoil;
 - h. Use, storage or application of herbicides and/or pesticides;
 - i. Draining the stream buffer area by ditching, underdrains or other systems.
5. Stream buffer protective barriers shall be maintained throughout the developer's activities.
 - a. For planned developments and commercial uses, permanent boundary markers, in the form of signage approved by the planning department, shall be installed once the land disturbing activity or development is complete. Clearly visible stream buffer boundary markers shall be placed along the outside edge of the stream buffer and spaced at a maximum of every 100 feet.
 - b. Prior to issuing a certificate of occupancy for planned developments, documentation shall be in place to inform property owners of the stream buffer presence and location along with management and maintenance requirements. Documentation shall be in a form that will run with the property such as inclusion in covenants, conditions and restriction documents or deed reference.

F. Exceptions.

1. Subject to prior written authorization by the planning director or his/her designee, the following activities may be undertaken within the stream buffer provided they meet all the standards specified herein as well as other applicable provisions of the land use code:
 - a. Crossings by streets, driveways, culverts, railroads, recreational features, intakes, docks, utilities, bridges or other facilities shall be allowed provided that they are designed to minimize the amount of intrusion into the stream buffer. Streets and driveways may run generally within and parallel to the stream buffer only where no other access to the property is feasible and when their design minimizes the amount of intrusion into the stream buffer. Crossing with a width of 40 feet or more are permitted only when it has been demonstrated that there is no practical alternative.

- b. Stream buffers may be used for passive recreational activities, such as unpaved or paved trails or greenways, provided that service facilities for such activities, including but not limited to parking, picnicking and sanitary facilities, are located outside of the stream buffer. Where practical, such activities shall be kept at least 15 feet from the stream bank.
- c. Clearing and revegetating the stream buffer pursuant to a plan approved by the planning director when it has been demonstrated that such clearing and revegetation will improve stream buffer's pollutant removal efficiency.
- d. Stormwater control structures and temporary erosion control structures shall be considered utilities for the purposes of this section and may be allowed in stream buffers, provided that:
 - i. The property owner or applicant demonstrates to the satisfaction of the planning director or his/her designee that such facilities cannot be practicably located outside of the stream buffer, and that any proposed stormwater control structure is sited and designed to minimize disturbance of the stream and stream buffer.
 - ii. Alternate methods of stormwater and erosion control shall be considered prior to approval of such structures in the stream buffers.
 - iii. A vegetated buffer of a width approved by the planning director or his/her designee shall be required around the stormwater control structure.
 - iv. Any land disturbed for these structures shall be revegetated with appropriate native species in accordance with a revegetation plan approved by the planning director or his/her designee.\
- e. Sanitary sewer lines, on an alignment generally parallel to the stream, may be allowed in stream buffers, provided that:
 - i. The property owner or applicant demonstrates in writing to the satisfaction of the public services director that the sanitary sewer lines cannot be practicably located outside of the stream buffer.
 - ii. Design and construction specifications minimize damage to the stream and the possibility of line leakage.
 - iii. The sewer line is located at least 15 feet from the top of the stream bank; and
 - iv. The sanitary sewer plan and a plan for revegetating the stream buffer disturbance shall be approved by the public works director.
- f. Streams may be piped, thereby exempting the piped section of the stream from stream buffer requirements, provided such piping complies with the permitting/certification requirements of the Clean Water Act and any other applicable state and federal regulations. Piping undertaken for the purpose of accommodating public roads, railroads, greenways, recreational facilities and private roads and drives should be designed so that the right-of-way or roadway-and-shoulder width is not more than is necessary considering the design capacity for the facility and so that the proposed stream piping is not substantially in conflict with the other objectives of this section. Where stream piping is approved, a vegetated buffer area or other device shall be provided at any intake or discharge structure. All buffers and physical improvement related to the stream piping shall be located entirely on the site or, pursuant to easement, on lands adjacent to the site.
- g. Selective removal of invasive exotic species in accordance with a plan approved by the planning director or his/her designee.
- h. View corridors are allowed so long as the soil is undisturbed and the natural forest floor, ground cover and understory vegetation are left intact. Pruning associated with the creation and

maintenance of a view corridor is exempt. Thinning of the overstory and mid-canopy trees is permissible with the written authorization of the planning director or his/her designee.

- i. Site plan approval by the planning director or his/her designee shall be required for any of the stream buffer intrusions described above. When any of the activities described above involves land clearing, the cleared area shall be revegetated pursuant to an approved plan. However, where a site plan is not required by any other provision of the land use code, the director of public works is authorized to approve plans for stream piping and erosion control structures in stream buffers.

G. **Minimum lot size requirements.** Land within the stream buffer can serve to minimum lot size and setback requirements if there is sufficient buildable area remaining on the lot.

H. **Diffuse flow requirement.** Diffuse flow of runoff shall be maintained in the stream buffer dispersing concentrated flow and reestablishing vegetation.

1. Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the 20-foot setback area defined in section 20-383, above.
2. Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.

I. **Special provisions pertaining to certain residential uses.** b For certain residential uses as prescribed herein, the stream buffer shall be reduced to 15 feet and the transitional area described herein shall be reduced to 15 feet. To qualify for these special provisions, a proposed development must meet the following criteria:

1. Use of the lot must be limited to a one- or two-family residential dwelling.
2. The lot may not exceed one acre in area.
3. The amount of impervious surface allowed on the lot shall not exceed 25 percent of the lot or 3,000 square feet, whichever is greater.



§ 8.04 Quasi-Judicial Review Procedures

8.04.01 Variance

- A. **Applicability.** A variance provides limited relief from the requirements of this UDO related to height, width, length, or location of structures, and the size of setbacks and open spaces, in those cases where strict application of a particular requirement will create an unnecessary hardship by preventing the use and development of land in a reasonable manner that is otherwise allowed under this UDO. A Variance is not a right. It may be granted to an applicant only if the applicant establishes compliance with the hardship criteria established in this Section.
- B. **Historic Preservation Commission Recommendation.** Variance requests pertaining to property, signs, or structures within the town's designated historic district, or on structures designated on the National Register, must be reviewed by the town's historic preservation commission and a recommendation in the form of a certificate of appropriateness provided prior to the Board of Adjustment's deliberations.
- C. **Exemptions.** Some requests for relief are not within the jurisdiction of the Board of Adjustment (BOA), and are therefore, either prohibited or not subject to this Section. These requests are:
1. Allow the establishment of a use which is not otherwise allowed in a zoning district or which would change the zoning district classification or the district boundary of the property in question.
 2. Vary from the flood protection provisions within the designated floodway district in any way which would result in any increase in the flood levels during the regulatory flood discharge or threaten the public safety (see flood hazard protection ordinance concerning variances).
 3. Conflict with the North Carolina State Building Code, the North Carolina Fire Code, or any other state code unless otherwise authorized by laws and regulations.
 4. Permit the creation of a nonconforming lot.
 5. Deviate from the sign regulations within the sign ordinance unless the requested variance is within the Town's historic district and the variance would further the goals of the Historic Preservation Commission.
- D. **Specific Review Criteria.** In determining whether to approve, approve with conditions, or deny a Variance, the applicable review bodies shall consider the provisions of Section [8.01.06](#), Common Decision Criteria, together with the following:
1. *Unnecessary Hardship.* Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the Variance, no reasonable use can be made of the property.
 2. *Conditions Peculiar to the Property.* The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a Variance.
 3. *Actions Taken by the Applicant or the Property Owner.* The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a Variance is not a self-created hardship.
 4. *Spirit, Purpose, and Intent.* The requested Variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

- E. **Federal Fair Housing Act.** In accordance with NCGS §160D-705, a variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- F. **Vote.** The concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to approve a Variance.
- G. **Effect.**
 - 1. *Particular Variation.* Issuance of a Variance shall authorize only the particular variation that is approved in the Variance request. A Variance shall run with the land and not be affected by a change in ownership.
 - 2. *Other Approvals.* Development authorized by the Variance shall not be carried out until the applicant has secured all other development approvals required by this UDO or any other applicable provisions of the Town. Approval of a Variance does not guarantee that the development shall receive subsequent approval for other development review applications unless the relevant and applicable portions of this UDO or any other applicable provisions are met.

8.04.02 Variance, Floodplain

- (A) The Board of Adjustment shall hear and decide requests for variances from the requirements of Chapter 6.
- (B) Variances may be issued for:
 - (1) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - (2) Functionally dependent facilities if determined to meet the definition as stated in article 2 of this ordinance, provided provisions of article 4, section E(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or (NEED TO UPDATE THESE REFERENCES)
 - (3) Any other type of development, provided it meets the requirements of this section.
- (C) In passing upon variances, the board of adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;
 - (5) The necessity to the facility of a waterfront location as defined as a functionally dependent facility, where applicable;
 - (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

- (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (D) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (E) Upon consideration of the factors listed above and the purposes of this ordinance, the board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
- (F) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the base flood elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to \$25.00 per \$100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (G) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (H) Conditions for variances:
 - (1) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
 - (2) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (4) Variances shall only be issued prior to development permit approval.
 - (5) Variances shall only be issued upon:
 - (a) A showing of good and sufficient cause;
 - (b) A determination that failure to grant the variance would result in exceptional hardship; and
 - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (I) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met.
 - (1) The use serves a critical need in the community.
 - (2) No feasible location exists for the use outside the special flood hazard area.
 - (3) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
 - (4) The use complies with all other applicable federal, state and local laws.
 - (5) The Town of Black Mountain has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

8.04.03 Special Use Permit

- A. **Generally.** In addition to the standards for Special Use Permits in [2.04.07, Special Use Permits](#), the following procedures shall be followed:
1. *Notice of Hearing.* Notice of the hearing shall be provided as follows:
 - a. Staff shall prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way within the same period specified for mailed notices of the hearing. When multiple parcels are included, a posting on each individual parcel is not required but notices shall be placed in strategically visible locations so as to provide reasonable notice to interested persons.
 - b. Staff shall place notification of the evidentiary 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 time and place of hearing.
 - c. Staff shall mail notice of the hearing to the applicant; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels within 200 feet of the parcel of land that is subject of the hearing; and to any other persons entitled to receive notice as provided by the development regulations. In the absence of evidence to the contrary, notice will be mailed to the owner reflected in the county tax listing at the address where county tax notices are sent. The notice must be deposited in the mail at least ten days but not more than 25 days prior to the date scheduled for the hearing.
 - d. Staff shall place a notice of the hearing on the Town's website.
 2. *Materials Provided.* Staff shall transmit to the Board, in written or electronic form, all applications, reports, and written materials relevant to the application. Such materials may be distributed prior to the hearing if, at the same time they are distributed to the Board, a copy is also provided to the applicant and to the landowner if that person is not the applicant. The administrative materials shall become a part of the hearing record. Objection to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the Board at the hearing.
 3. *Hearing Procedure.*
 - a. The applicant has the burden of producing competent material and substantial evidence tending to establish the existence of the facts and conditions which this ordinance requires for the issuance of the special use permit.
 - b. The applicant, the Town of Black Mountain, and any person who would have standing to appeal the issuance or denial of the special use permit shall have the right to participate as a party at the hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the Board. Objections shall be ruled upon by the Board chair and the chair's ruling may be appealed to the full Board.
 - c. In considering an application for a special use permit, the Board of Adjustment will consider and may attach reasonable and appropriate conditions to the location, nature, and extent of the proposed use or uses, structures and other improvements, and the relation of such uses, structures, or improvements to surrounding property. Any such conditions may relate to parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, and other matters the Board of Adjustment may find appropriate or that the applicant may propose.

4. *Effect of Approval.* A special use permit, once approved, attaches to and runs with the land and no subsequent development or use of the property may be undertaken except in conformity with the permit and all plans, specifications, and conditions.
5. *Reapplication for a Special Use Permit.* If an application for a special use permit is denied by the Board of Adjustment, a reapplication for that special use on that property may not be filed, unless, upon request of the property owner, the Board of Adjustment determines that there have been sufficient changes in conditions or circumstances bearing on the proposed project to warrant a reapplication.
6. *Revocation or Termination.* A special use permit may be revoked if the standards for approval are not being met. After revocation, the special use must cease, and use or development of the property must comply with the standards of the district where the property is located.

8.04.04 Appeal of Administrative Decision

- A. **Generally.** 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.
- B. **Procedure.** 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.
- C. **Time Frame for Appeal.** 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,
- D. **Posting.** 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.
- E. **Written Notice.** 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.
- F. **Materials to Board.** 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.
- G. **Stay of Action.** 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.

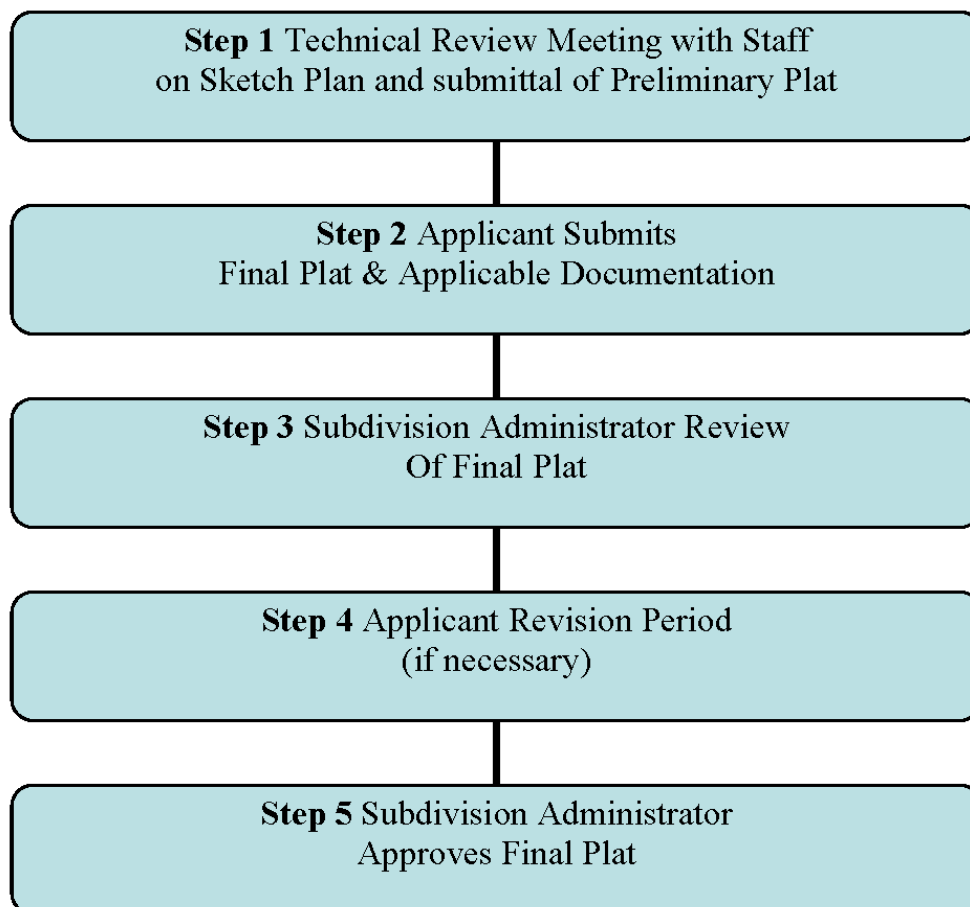
- H. **Appearance on Agenda.** The Board of Adjustment shall hear and decide the appeal at the next scheduled meeting where proper notice can be met.
- I. **Official to Appear.** The official who made the decision, or the person currently occupying that position if the decision-maker is no longer employed 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.
- J. **Scope of Review.** 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 and the scope of review shall be as provided in N.C.G.S. § 160D-1402(k).
- K. **Appeal of Decision of Board of Adjustment.** 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 to the applicant.



§ 8.05 Subdivision Review Procedures

8.05.01 Minor Subdivision

- A. **Applicability.** The minor subdivision process shall be used only where the subdivision includes all contiguous land under the ownership of the applicant and where the resultant lots will not constitute a new phase of an existing development.
- B. **Limitations.** The minor subdivision process is not intended to permit the avoidance of improvements, infrastructure or other standards imposed for major subdivisions. Therefore, when an application for minor subdivision approval is made by an applicant who has previously obtained minor subdivision approval for an adjacent parcel of land in the previous two years, the application shall be treated as an application for, and conform to the requirements of, a major subdivision as set forth below.
- C. **Review Procedures.** The following procedures shall be followed for minor subdivisions. The numbers in the boxes below correspond with a detailed description of each step of the process on the following:



Step 1. Pre-application Meeting.

- A. The applicant shall schedule a pre-application meeting with the subdivision administrator. The applicant shall bring a preliminary plat of the proposed development to the meeting that meets the requirements set forth in the land use code.
- B. The subdivision administrator shall review the preliminary plat for compliance with this land use code and shall inform the applicant of any deficiencies. Additional information concerning the proposed subdivision may be required at the request of the subdivision administrator.
- C. One copy of the preliminary plat shall be retained as a part of the record of the subdivision administrator with one copy being returned to the subdivider or his authorized agent along with comments made by the subdivision administrator concerning the plat as generated during the review. No improvements shall be made until the preliminary plat is filed with the subdivision administrator.

Step 2. Applicant Submits Final Plat.

The subdivider shall submit the final plat in accordance with the requirements of section 3.4.

Step 3. Review of final plat by subdivision administrator.

The subdivision administrator shall review the final plat in accordance with the requirements of this code.

Step 4. Applicant revision period (if necessary).

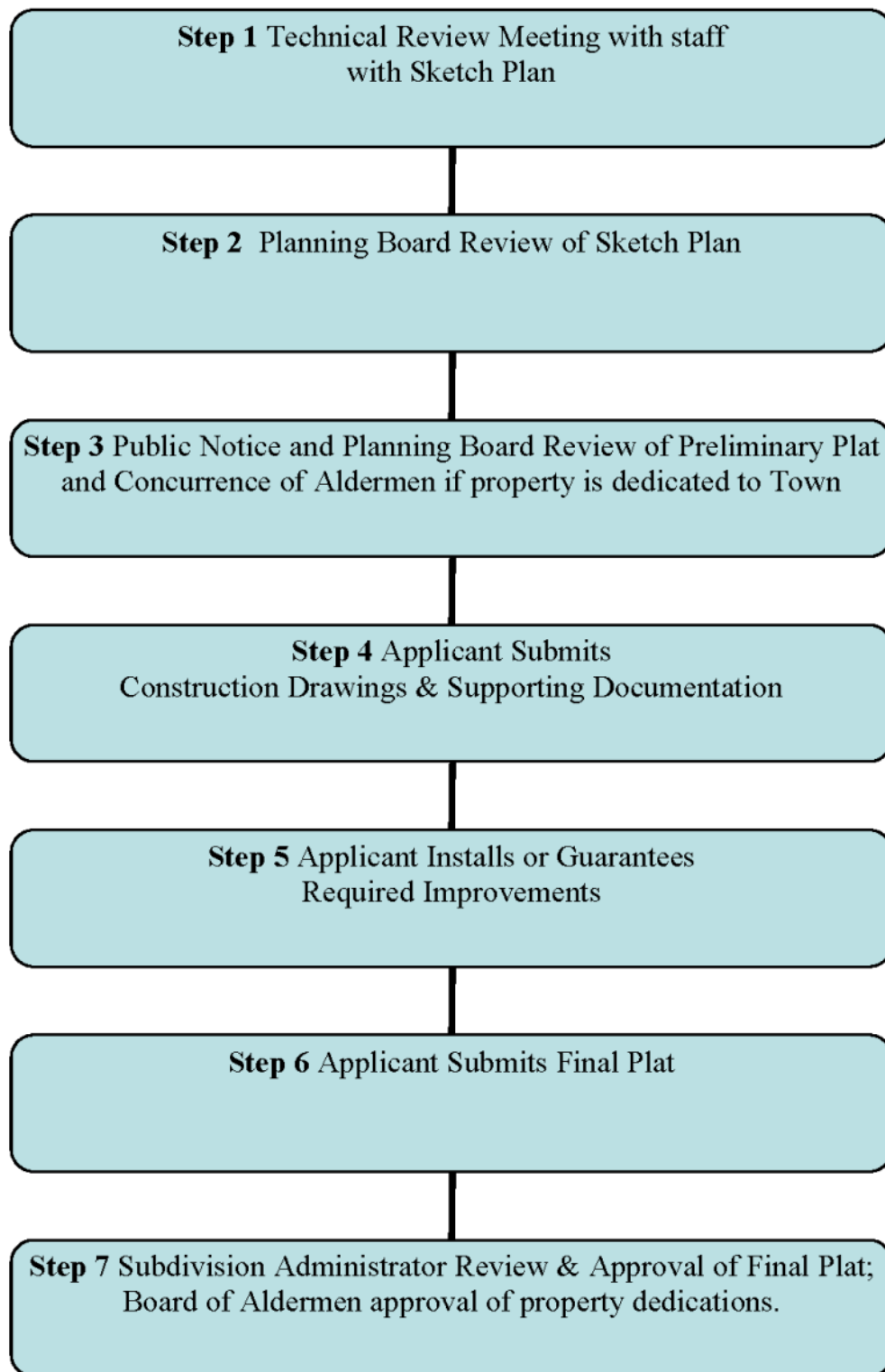
If the proposed plat is not approved, the applicant may revise the plat in accordance with the comments provided by the subdivision administrator and may resubmit the plat for approval.

Step 5. Subdivision administrator approval of final plat.

- A. The subdivision administrator shall approve or disapprove the plat within 15 days of submission.
- B. The subdivider shall bring a recorded copy to the subdivision administrator for the file. No permits shall be issued for individual lots until a recorded copy is provided.

8.05.02 Major Subdivision

- A. **Applicability.** Any subdivision of land, other than an exempt subdivision or minor subdivision, is a major subdivision subject to review and approval as provided below.
- B. **Review Procedures.** The following procedures shall be followed for major subdivisions. The numbers in the boxes below correspond with a detailed description of each step of the process on the following:



Step 1: Pre-application meeting with sketch plan.

- A. The applicant shall schedule a pre-application meeting with the subdivision administrator. The applicant shall bring a sketch plan of the proposed development to the meeting that meets the requirements set forth below:
 - 1. A sketch plan of the project should be prepared for the consultation, drawn approximately to scale (1 inch = 60 feet). Sketch plans for subdivisions, special use permits and institutional campus development have specific, additional requirements. All sketch plans shall contain at a minimum the following information as applicable:
 - a. The name and address of the developer;
 - b. Total acreage of the subject parcel;
 - c. The proposed site layout, including street and lot arrangement, designation of driveways, parking lots, open space, greenways, and stormwater management areas;
 - d. Topographic lines and drainages; and
 - e. 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 UDO.
- B. The subdivision administrator shall review the sketch plan with the applicant for compliance with this land use code. The public works director, fire marshal, local NCDOT district representative, Metropolitan Sewerage District representative, or other agency representative may be included in the technical review of the sketch plan. The subdivision administrator shall advise the applicant of the regulations pertaining to the proposed subdivision and the procedures to be followed in the preparation and submission of the preliminary and final plats.
- C. One copy of the sketch plan shall be retained as a part of the record of the subdivision administrator with one copy being returned to the subdivider or his authorized agent along with comments made by the subdivision administrator concerning the proposed plat.

Step 2: Planning board review of sketch plan.

- A. The sketch plan shall be forwarded to the planning board for input and comment. The planning board shall review the sketch plan for general compliance with the requirements of this chapter and any other applicable regulations, and set a date, usually the following regularly scheduled planning board meeting, for the applicant to return to the planning board with a preliminary plat.
- B. Comments generated from the staff technical review and planning board comments of the sketch plan will be submitted in writing to the applicant.

Step 3: Planning board review and approval of preliminary plat.

- A. The applicant shall submit preliminary plat to the subdivision administrator who shall place the item on the agenda of the next regularly scheduled planning board meeting along with his or her recommendation as to whether the preliminary plat should be approved.
- B. Notice shall be given per the required notice for the meeting and its agenda.
- C. Before the planning board reviews the preliminary plat, the following agencies shall be given an opportunity to make recommendations concerning the proposed subdivision plat:
 - 1. The district highway engineer as to the any proposed state streets, state highways, and related drainage systems;
 - 2. The county health director, public works director, MSD representative, and representatives of any other local public utility, as appropriate, as to proposed water or sewerage systems;
 - 3. The fire marshal; and

4. The stormwater and floodplain administrator(s).
- D. The planning board shall review the plat for conformity with the requirements of this land use code and shall either approve, approve with modifications, or deny the application for approval of the preliminary plat.

Step 4: Applicant submits construction drawings and supporting documentation.

Following preliminary plat approval, the applicant shall submit engineer sealed construction drawings and supporting documentation for each individual phase or phases of development. The public works director, building inspector and fire marshal shall review and approve the construction drawings for all public roads, private roads and water infrastructure. If the preliminary plat was approved with modifications by the planning board, the applicant shall also submit a revised plat reflecting such changes.

Step 5: Infrastructure/improvements installed or guaranteed.

- A. Following approval by the public works director, building inspector and fire marshal, the subdivider may proceed with the installation of or arrangement for required improvements in accordance with the approved preliminary plat and the requirements of this ordinance.
- B. Prior to approval of a final plat, the subdivider shall have installed the improvements specified in this ordinance or guaranteed their installation.
- C. Following the completion of the improvements and infrastructure, the subdivider shall provide as-built construction drawings to the public works director and the fire marshal.

Step 6: Applicant submits final plat.

- A. The applicant shall submit a final plat to the subdivision administrator that meets the requirements of this UDO.
- B. The applicant shall submit the final plat within two years after the planning board's approval of the preliminary plat; otherwise, such prior approval of the preliminary plat shall become null and void. In that event, final plat approval shall not be granted unless and until the applicant resubmits the preliminary plat for approval by the planning board.
- C. If required, evidence of formation of a legally constituted homeowner's association and any maintenance agreements with the homeowner's association shall be submitted to the planning department with the final plat.

Step 7: Subdivision administrator review and approval of final plat.

- A. The subdivision administrator shall:
 1. Review the final plat for compliance with the approved preliminary plat;
 2. Ensure that the final plat meets the requirements of this UDO;
 3. Verify that all required infrastructure improvements have been completed or that a financial guarantee has been provided;
- B. The subdivision administrator shall approve, disapprove, or approve subject to minor modifications within 15 days of submission of the plat.
- C. The applicant shall file the plat for recording in the Office of the Register of Deeds for Buncombe County within 90 days from the date of approval and shall bring a recorded copy to the planning and development department for filing with the town clerk. No permits shall be issued for individual lots until a recorded copy is provided.

8.05.03 Exception

Pursuant to NCGS §160D-802, a subdivision plat shall not be required for any of the following:

- A. **Combination or Recombination.** The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the Town as shown in this UDO.
- B. **Large Parcels.** The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.
- C. **Public Acquisition.** The public acquisition by purchase of strips of land for the widening or opening of streets.
- D. **Minor Division.** The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this UDO.
- E. **Probated Will.** The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under NCGS Chapter 29.
- F. **Plat for Recordation.** Only a plat for recordation for the division of a tract or parcel of land in single ownership is required if all of the following criteria are met:
 - 1. *Not Otherwise Exempted.* The tract or parcel to be divided is not otherwise exempted by this Section;
 - 2. *No Previous Division.* No part of the tract or parcel to be divided has been divided under this Section in the 10 years prior to division;
 - 3. *Large Parcels.* The entire area of the tract or parcel to be divided is greater than five acres;
 - 4. *Few Lots.* After division, no more than three lots result from the division; and
 - 5. *Conformity with UDO.* After division, all resultant lots comply with all of the following:
 - a. Any lot dimension and size requirements of this UDO;
 - b. The use of the lots is in conformity with the applicable zoning district; and
 - c. A permanent means of ingress and egress is recorded for each lot.



CHAPTER 11: WORD USAGE

Contents:

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§ 11.01 Rules of Construction

11.01.01 Rules of Construction

- A. **"Shall," "will," "should," "may," and "must."**
 - 1. The words "shall," "must," and "will" are always mandatory.
 - 2. The words "should" and "may" are discretionary.
- B. **Representative of the Town.** Any office referred to in this UDO by title means the person employed or appointed by the Town in that position, or their duly authorized representative or designee, and includes any person designated to perform the duties of such office.
- C. **Customary Usage.** Definitions not expressly prescribed in this UDO are to be construed in accordance with customary usage in municipal planning, engineering, and architectural practices.
- D. **Most Recent Version.** All references to other county, state, or federal regulations in this UDO refer to the most current version and citation for those regulations, unless expressly indicated otherwise. If the referenced regulations have been repealed and not replaced by other regulations, requirements for compliance are no longer in effect.
- E. **Tense and Number.** Words in the present tense include the future and vice-versa. Words in the singular number include the plural number and vice-versa.
- F. **Building and Structure.** The word "building" includes the word "structure."
- G. **District.** The word "district" means zoning district.
- H. **Town.** The word "Town" means Black Mountain, NC.
- I. **Administrator/Director.** The words "administrator", "director", "public works director", and "planning director" shall mean anyone authorized by the Town Administrator to enforce this UDO or any provision therein.
- J. **Gender.** If a feminine term is used, the masculine also applies and vice-versa. All gender terms shall have no binary meaning.
- K. **Conjunctions.**
 - 1. And. The word "and" shall be construed to include all connected items in a series or set of conditions or provisions.
 - 2. Or. The word "or" shall be construed to include one or more of the items in a series or set of conditions or provisions, unless the context clearly indicates otherwise.
- L. **Lists.** The use of terms such as "including," "such as," or similar language are intended to provide examples, not to be exhaustive lists of all possibilities, unless the context clearly indicates otherwise.
- M. **Rounding.**

1. **Parking.** If the application of a minimum parking ratio results in a fraction of a parking space (for example, a building requiring 20.75 parking spaces), the non-whole number shall be rounded down to the next whole number (in this case, 20).
 2. **All Other Formulas.** If any other regulatory formula in this UDO results in a non-whole number of an indivisible object or feature (for example, a buffer yard requiring 6.33 trees), then the non-whole number shall be rounded up to the next highest whole number (in this case, 7).
- N. **Days.** All references to “days” are deemed calendar days unless expressly indicated otherwise. The time in which an act shall be completed is computed by excluding the first day and including the last day. In computing working days, if applicable, Saturdays, Sundays or holidays observed by the Town are excluded. A day concludes at the close of business for the Planning Department, and any materials received after that time will be deemed to have been received the following day.
- O. **Illustrations, Tables, and Text.**
1. **Text.** The text material of this UDO controls over tables and illustrations in cases of inconsistency. Likewise, tables control over illustrations.
 2. **Graphics.** Illustrations and photographs in this UDO are provided for illustrative purposes only.
- P. **Defined and Undefined Terms.** Terms defined in Section 11.02, *Definitions*, are those having a meaning relative to the purposes of this UDO. All words not defined in Section 11.02, *Definitions*, shall be given their usual and customary meanings, according to the Planning Director, unless the context clearly indicates otherwise.

§ 11.02 Definitions

11.02.01 Definitions

Abut: Having a common boundary or lot line not separated by a street, alley, railroad or other right-of-way (distinguished from adjacent which can include abutting property or those across a street).

Access management: Techniques for providing access to land in development while simultaneously preserving the flow of traffic on the surrounding road system in terms of safety, capacity and speed.

Accessory dwelling, accessory apartment, or secondary dwelling: A dwelling unit located on the same lot as a detached single-family house, such as garage apartments or "granny flats," but which is smaller in size than the principal structure (see also under dwelling and refer to guidelines for secondary dwellings, chapter 5).

Accessory structure: A structure detached from a principal building and located on the same lot and incidental and subordinate to the principal building or use which is not used as a dwelling unit.

Accessory use: A use of land or of a building or structure or portion thereof incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use.

Acre: means 43,560 square feet.

Additional required protection features: Fire suppression equipment that is installed in a structure and designed to lessen the exposure to potential fire damage, such as automatic fire protection and alarm systems or other features that provide increased levels of fire protection.

Adjacent: Either abutting or being directly across a street.

Administrative decision: Decision made in the implementation, administration, or enforcement of development regulations that involves the determination of facts and the application of objective standards set forth in these development regulations. Also known as "ministerial".

Administrative hearing: A proceeding to gather facts needed to make an administrative decision.

Adult day care center: A day care program for adults operated in a structure other than a single-family dwelling.

Adult day care home: A day care program for up to 16 adults operated in a single-family dwelling.

Adult establishment: An adult bookstore, adult motion picture theatre, adult mini motion picture theatre, or adult live entertainment business as defined in N.C.G.S. § 14-202.10.

Affordable: A sales price or rent within the means of a low- or moderate-income household as defined by state or federal legislation within Buncombe County.

Agriculture: The science, art and business of cultivating the soil, producing crops and raising livestock, including the production, keeping or maintenance, for sale, lease or personal use, of plants and animals useful to man, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products, poultry and poultry products; fisheries, trout farms, livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats or any mutations or hybrids thereof, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or lands devoted to a soil conservation program. See chapter 5.4. The term "agriculture" shall also include state NCGS definitions for "Bona fide farm" and:

Boarding stable: A structure designed for the feeding, housing, and exercising of horses not owned by the owner of the premises and for which the owner of the premises receives compensation.

Breeding farm: An agricultural establishment where animals are impregnated either naturally or by artificial insemination, and the principal purpose of which is to propagate the species.

Farm: A parcel of land used for agricultural activities.

Farm stand: A temporary or permanent structure established only for the display and direct sale of farm products and home-made crafts which is less than 150 square feet in total area including display tables. This term shall include the temporary use of a vehicle such as a pick-up truck for the display and sale of farm products.

Farm structures: Any building or structure used for agricultural purposes.

Feedlot: A confined area or structure, pen, or corral, used to hold and feed livestock.

Market gardening: Cultivating herbs, plants, fruits, flowers, vegetables and home-made crafts for sale through local markets, including but not limited to tailgate markets, farmers markets, florists and produce stands, or for sale to restaurants or other establishment which serve them to the public.

Nurseries: Land or structures used to raise flowers, shrubs, and plants for sale, including greenhouses.

Alley: A service roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

Amusements: Establishments engaged in providing entertainment for a fee, including arcades, bowling alleys, billiard or pool halls, miniature golf and any coin-operated machines or devices whether mechanical or electronic for use as a game; entertainment or amusement.

Animal boarding or kennel services: A commercial establishment in which dogs or other domesticated animals are housed, groomed, bred, boarded, trained or sold, for a fee or compensation.

Animal grooming services: Establishments primarily engaged in providing grooming services to domesticated animals.

Animal hospital: Establishment of licensed veterinary practitioners primarily engaged in the practice of veterinary medicine, dentistry, or surgery for animals; and establishments primarily engaged in providing testing services for licensed veterinary practitioners.

Animal or veterinary clinic: A place where animals are given medical care and the boarding of animals is limited to short-term care incidental to the hospital use.

Apartment unit: One or more rooms with a private bath and kitchen facilities comprising an independent self-contained dwelling in a building containing three or more dwelling units.

Art studio: The workshop of an artist, sculptor, photographer or craftsman.

Assisted living facility: A facility offering a combination of housing, supportive services, personalized assistance, and health care designed to respond to the individual needs of those who need help with activities of daily living.

Automobile parking: Parking of operational and street legal motor vehicles on a temporary basis within an offstreet parking area.

Automobile services or stations: Any building, garage, land area, or other premises or portion thereof, used for dispensing or selling vehicular fuels, or servicing and repair of automobiles. (also see "neighborhood fueling facility" which is distinct from this category). This term shall include:

Automobile wash, car wash or detail shop: Any building or premises or portions thereof used for cleaning, washing, and/or waxing automotive vehicles, such as passenger cars, trucks, and vans, and trailers.

Automobile body shop: Any premises which repairs, paints or works on the exterior of vehicles, including window repair and tinting.

Audio installation: Any premise which installs or repairs vehicle audio systems.

Automobile rentals: Establishments primarily engaged in renting passenger cars without drivers, generally for short periods of time.

Automobile sales: The use of any building, land area, or other premises for the display and sale of new or used automobiles, light trucks, vans, trailers, or recreational vehicles.

Automobile wrecking/salvage: An establishment that cuts up, compresses or otherwise disposes of motor vehicles.

Awning: A structure made of cloth, metal, or other material affixed to a building in such a manner that it shades windows or doors below, but is not a constructed canopy.

Bakery, retail: An establishment primarily engaged in the sale of bakery products. The products may be purchased from others or made on the premises.

Bakery, wholesale: Establishments primarily engaged in manufacturing fresh or frozen bread and bread-type rolls and fresh cakes, pies, pastries and other similar "perishable" bakery products for wholesale.

Bank: A freestanding building, with or without a drive-up window, for the custody, loan, or exchange of money; for the extension of credit; and for facilitating the transmission of funds.

Bar: Premises used primarily for the sale or dispensing of alcoholic beverages in accordance with state and local laws for on-site consumption and where food is not necessarily provided.

Barber/beauty services: An establishment primarily engaged in furnishing beauty or hairdressing services which will include those providing tanning services, facials, pedicures, and manicures.

Basement: A building story where the floor level is more than four feet on average below the finished grade.

Bed and breakfast home: A private, owner-occupied residence with one to four guest rooms where overnight accommodations and a morning meal are provided to transients for compensation, and where the bed and breakfast use is subordinate and incidental to the main residential use of the building. The homeowner shall reside on site and employment shall not exceed the equivalent of one full-time employee in addition to the owner..

Bed and breakfast inn: A private, owner-occupied business with five to 12 guest rooms where overnight accommodations and a morning meal are provided to transients for compensation and where the bed and breakfast inn is operated primarily as a business. The homeowner shall reside on site and employment shall not exceed the equivalent of three full-time employees in addition to the owner..

Bedroom: See *sleeping room*.

Boarding house or rooming house: A dwelling unit or part thereof in which, for compensation, lodging and meals are provided on a minimum of a weekly basis for at least three, but less than ten, unrelated individuals and where the owner or manager is a full-time resident of said establishment. Excludes hotels, motels, bed and breakfast homes and bed and breakfast inns.

Brewery: An establishment engaged in the production and distribution of beer and other fermented malt beverages. The establishment may include areas for demonstration, education, tasting and other uses permitted in the district, in accordance with state and local laws.

Brew pub restaurant: An establishment in which the beer, ale, porter and other fermented malt beverages are produced and sold onsite as part of a restaurant.

Broadcasting services: An establishment engaged in transmitting audio and visual programs to the public, and includes a studio, transmitter, or antennas.

Buffer: A strip of land. The term buffer may include natural or planted vegetation, the area located between a structure or use and a side or rear property line, or any area intended to spatially separate and visually obstruct the view of tow adjacent land uses or properties from one another, or any required screening, landscaping or stormwater that protect surface waters from runoff.

Buildable area: That portion of any lot which may be used or built upon in accordance with the regulations governing the zoning district within which the lot is located when the front, side, and rear yard requirements for the district and any open space requirements have been subtracted from the total area.

Building: A structure with a roof and walls built for permanent use. When used in reference to a residential structure, any one- or two-family dwelling or portion thereof, including townhouses, that is used, or designed or intended to be used for habitation for living, sleeping, cooking, or eating purposes or any combination thereof, including accessory structures.

Building, height of: The height of a building or structure as measured according to the guidelines of this code (see 4.5.2).

Building permit: Written permission issued by the building inspector for the construction, repair, alteration or addition to a structure.

Building materials sales: Establishments engaged in selling primarily lumber, or other general building materials, including, flooring, molding, doors, sashes, frames, roofing, siding, shingles, wallboard, paint, brick, tile, cement, sand, gravel, and other building hardware, materials and supplies.

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

Business service: Establishments primarily engaged in rendering services to business establishments on a fee or contract basis, such as advertising, mailing, copy and duplication services, building maintenance, employment services, management consulting services, protective services, equipment rental and leasing, commercial research, development and testing, and personal supply.

Camp, summer or seasonal: Establishments engaged in seasonal or overnight, recreational housing and conducting a variety of educational and athletic activities. These establishments provide accommodation facilities, such as cabins or fixed campsites, food services, on-site recreational facilities and equipment, or organized recreational activities.

Campground: A plot of ground upon which two or more campsites are located, established, and maintained for occupancy by camping units as temporary living quarters for recreation, education or vacation purposes.

Campus: The grounds and buildings of a public or private college, university, school or institution.

Carnival: Any aggregation of shows or riding devices, games of skill or chance, or any combination of shows and riding devices, or any combination of several enterprises, such as revolving wheels, merry-go-rounds, giant swings, panoramas, musical and theatrical entertainments, or riding devices, whether carried on or engaged in or conducted in any field, park, or in a building or enclosure, and whether carried on, engaged in, or conducted as one enterprise or by several concessionaires, and whether one admission fee is charged for admission to all such shows or entertainments, or separate fee for admission is charged for each amusement.

Carport: A roofed structure providing space for the parking of motor vehicles and enclosed on not more than three sides.

Ceiling height: The vertical distance from the finished floor to the finished ceiling.

Cemetery: A designated parcel of land used for the interment of the dead in the ground or in memorial structures such as mausoleums or columbarium. See also "Columbarium."

Certificate of appropriateness: Document certifying compliance with historic district guidelines.

Certificate of occupancy (CO): Document allowing occupancy or use of a building and certifying that the structure or use is compliant with local and state codes and ordinances.

Certificate of zoning compliance: A certification that a use or completed structure conforms to the provisions of the land use code and may be used or occupied. Also, a certification that plans for land development or construction conforms to the provisions of the town's regulations.

Child care or day care center: An establishment providing for the care, supervision and protection of children that meets the North Carolina Licensing Standards for Day Care Centers. This term includes nursery schools, preschools, day care centers for individuals, and other similar uses but excludes public and private educational facilities or any facility offering care to individuals for a full 24-hour period.

Code enforcement officer: Any employee of the town whose assigned duties include the enforcement of one or more of the provisions of the code.

Columbarium: A structure for placement of cremated remains which may be outdoors or part of a mausoleum or memorial, but is not necessarily associated with a cemetery.

Commercial use: Activity involving the sale of goods or services carried out for profit.

Communication tower: A structure intended to furnish radio, cellular or television or other point-to-point communication services, whether by wire or radio, but not including amateur radio antennas affected and controlled by FCC regulations codified in, Chapter 47, Section 97, of the Code of Federal Regulations.

Community center: A building used for recreational, social, educational and cultural activities, open to the public or a designated part of the public, usually owned and operated by a public or non-profit group or agency.

Community facility: A building or structure owned and operated by a governmental agency to provide a governmental service to the public.

Composting: A controlled process of degrading organic matter by micro-organisms.

Condominium: A building or group of buildings in which dwelling units, offices, or floor area are owned individually, and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis. (as distinct from a town home).

Conference center: A facility used for conferences, retreats and seminars, with accommodations for sleeping, food preparation and eating, recreation, entertainment, resource facilities and meeting rooms.

Congregate care facility: A licensed multi-unit facility which provides housing, part-time medical care, shared food preparation and dining areas, and recreational facilities, as well as significant social facilities to meet the needs of the elderly. Congregate care facilities do not include nursing care institutions or similar institutions devoted similarly to the care of the chronically ill or incurable.

Conservation easement: A designation that grants one or more property rights to and for the public, a corporation, or other entity for the purpose of protecting environmentally sensitive or culturally or historically significant areas in perpetuity unless otherwise specified.

Conservation subdivision: A subdivision in which the lot sizes are reduced below those normally required in the zoning district in which the development is located and permanent open space is provided.

Convenience store: Any retail establishment consisting of no more than 3,500 square feet, offering for sale prepackaged food items, household items, newspapers, magazines, sandwiches or freshly prepared food for off-site consumption.

Cottage housing developments: A cluster of detached structures which are no larger than 1,100 square feet and which share common driveways, yards, and other exterior facilities.

Crematory: Establishments primarily engaged in operating sites or structures reserved for cremating the dead.

Cul-de-sac: The bulb-end design located on a short, dead-end street for the purpose of providing a turnaround for vehicular traffic.

Cultural or community facilities: Facilities designed to promote cultural advancement and serve the community such as art galleries, libraries, museums, art centers, community centers or facilities to house civic or fraternal organizations (provided that such facilities are not operated for profit).

Culvert: A conduit used to enclose a flowing body of water, and is frequently used to carry drainage water under a driveway, roadway, railroad, pedestrian walk or public way.

Curb: An improved boundary usually marking the edge of the roadway or paved area.

Curb cut: The opening along the curb line at which point stormwater, or motorized and non-motorized vehicles may enter or leave the roadway.

Demolish: The tearing down and disposal of an entire structure, leaving the property free and clear of any debris and without holes.

Demolition: The tearing down and disposal of an entire structure in a lawful manner, leaving the property free and clear of any debris or environmental hazards.

Density: The number of dwelling units per acre of residential land.

Deteriorated dwelling: A dwelling unit that can be repaired, altered or improved to comply with the minimum standards of the town's minimum housing code at a cost not in excess of 50 percent of its fair market value.

Determination: A written, final and binding order, requirement, or determination regarding an administrative decision.

Developer: A person who undertakes any development and who is the owner of the property. To be developed or who has been authorized by the owner to undertake development on that property.

Development: The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site or demolition of any structure; excavation, grading, filling, clearing or alteration of land; the subdivision of land as defined in N.C.G.S. 160D-802; the mitigation or substantial use of land or the intensity of use of land.

Development approval: An administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal, including but not limited to zoning permits, site plan approvals, special use permits, variances, and certificates of occupancy.

Development permit: A development approval in writing that is required prior to commencing development or undertaking any activity, project, or development, including any of the following: zoning permits, site plan approvals, special use permits, variances, certificates of appropriateness, plat approvals, development agreements, building permits, subdivision plat approvals, driveway permits, and sign permits.

Development regulation: A zoning regulation, subdivision regulation, erosion and sedimentation control regulation, flood plain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, state building code enforcement, or any other regulation that regulates land use or development.

Diameter at breast height (DBH), or caliper: The tree trunk diameter measured in inches at a height of 4.5 feet above the ground. Generally used for measuring existing trees.

Dilapidated dwelling: Any structure of dwelling unit that cannot be repaired or improved in order to comply with the minimum standards of the town's minimum housing code at a cost less than 50 percent of its fair market value.

Discharge: The introduction, either directly or indirectly, of any effluent, whether illicit or non-illicit, into North Carolina surface waters. (See chapter 8.2, Phase II Stormwater Ordinance).

Distillery: An establishment engaged in the production and distribution of spirituous beverages. The establishment may include areas for demonstration, education, tasting, and other uses permitted in the district, in accordance with state and local laws.

Dormitory: A building which is occupied or intended to be occupied as the dwelling for more than six persons who are not related by blood, marriage, or adoption but who are enrolled in, affiliated with, or employed by the same educational, religious, or health institution. "Dormitory" shall not include a boarding house, motel, hotel, group home, or health institution.

Drainage system: Pipes, swales, natural features, and man-made improvements which convey drainage.

Drip line: An imaginary vertical line extending from the outermost edge of a tree canopy or shrub branch to the ground.

Driveway: A private roadway providing access to a street or highway and serving less than four lots.

Driving range: A limited area on which golf players drive golf balls from a central driving tee, such area to include the driving tee and other incidental activities pertaining to this activity.

Dry cleaning: Establishments primarily engaged in providing dry cleaning, laundering, drop-off and pick-up sites or windows for laundry, or specialty cleaning services, without coin-operated machines.

Dumpster: Container designed to receive, transport and dump waste in conjunction with a hauling vehicle or truck. This definition includes containers used for recycling, oil containment, construction waste, or other materials and may be of varying size and design. This definition does not include containers used for waste or recyclable materials which may be wheeled or carried by hand, nor does it include temporary off-loaded dumpsters used for construction or yard waste which are removed after work is completed.

Duplex or two-family residence: A detached building which includes two individual dwelling units. A duplex may be held in single ownership or may be subdivided as a town home or condominium. It is a building designed as a single structure with two residential units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for a common stairwell exterior to both dwelling unit.

Dwelling: Any building that contains one or two dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied or that are occupied for living purposes.

Dwelling unit: A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation, including the following types:

Accessory dwelling or accessory apartment: A dwelling unit located on the same lot as a detached single-family house such as garage apartments or "granny flats," but which is smaller in size than the principal structure.

Apartment unit: One or more rooms with private bath and kitchen facilities comprising an independent, self-contained dwelling unit in a building containing three or more dwelling units.

Condominium: A building or group of buildings in which dwelling units, offices, or floor area are owned individually, and the structure, common areas and facilities are owned by all the owners on a proportional, undivided basis.

Detached dwelling or single-family unit: A dwelling unit on its own lot, designed for one household and developed with no party walls and with open yards on all sides including modular homes, but not including manufactured homes, recreational vehicles, campers or motor vehicles.

Townhouse or town home: A single household dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical, common fire-resistant walls. A subdivision of property within a townhome development, duplex or special use permit shall include the footprint of the structure directly underneath the dwelling unit plus any yard area designated to that unit as part of an approved master plan or building permit.

Easement: A grant of one or more of the property rights by the property owner to and/or for the use by the public, a corporation, or another person or entity.

Education facility: A facility for the education of children and adults including public and private elementary and secondary schools, colleges, technical institutes and universities, but excluding specialized trade schools and nursery school.

Egress: An exit from a parcel, lot or area of property.

Emergency services: Buildings or facilities used to house, station, provide or support emergency services including fire departments, police departments, ambulance and EMS stations, fire and police substations and training facilities.

Encroachment: Any obstruction or intrusion into a delineated flood hazard area, right-of-way, or adjacent property.

Erosion: The detachment and movement of soil or rock fragments or the wearing away of the land surface by water, wind, ice and gravity.

Evergreen: Those plants that retain foliage throughout the year.

Evidentiary hearing: A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation.

Excavation: Removal or recovery by any means whatsoever of soil, rock, minerals, mineral substances or organic substances, other than vegetation, from water or land, on or beneath the surface thereof.

Existing lot (of record): A lot which is part of a subdivision, a plat of which has been recorded in the office of the register of deeds prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.

Exit: A clear and unobstructed way of departure from the interior of a dwelling or commercial building to the exterior of the building at street or grade level.

Exterior features: The architectural style, general design, and general arrangement of the exterior of a structure, including the kind, texture, and color of building materials, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures, and including the landscaping and natural features of the parcel containing the structure.

Extermination: The control and elimination of insects, rodents or other pests by removing or making inaccessible materials that may serve as their food, or by poisoning, spraying, fumigating, trapping or other recognized and legal pest elimination method.

Extractive use/mining: Establishments that extract naturally occurring mineral solids, such as rock, coal and ores; liquid minerals, such as crude petroleum; and gases, such as natural gas. The term mining is used in the broad sense to include quarrying, well operations, beneficiating (e.g., crushing, screening, washing, and flotation), and other preparation customarily performed at the mine site, or as a part of mining activity.

Family or household: A group of individuals not necessarily related by blood, marriage, adoption or guardianship, living together in a dwelling unit under single housekeeping unit.

Family care home: A home that provides room and board and personal care and rehabilitation and habitation services for no more than six resident persons with disabilities or handicapped persons. Handicapped persons are those with physical, emotional, and mental disabilities (as distinct from group home).

Farm: see "Agriculture."

Farm supply: Establishments primarily engaged in the merchant wholesale distribution of farm supplies, such as animal feeds, fertilizers, agricultural chemicals, pesticides, plant seeds, and plant bulbs.

Fence: A structural barrier intended to provide screening, prevent escape or intrusion, or to mark a boundary.

Financial and insurance services: Establishments engaged in financial services and transactions including banks, credit unions or agencies, savings and loans, check-cashing, brokerages, or other financial institutions.

Fire apparatus access road: A road that provides fire apparatus access from a fire station to a facility, building or portion thereof. This is a general term inclusive of all other terms such as fire lane, public street, private street, parking lot lane and access roadway.

Flag lot or interior lot: A lot meeting the minimum lot requirements of the underlying zoning district but where access to the public road is by a portion of land adjacent to the lot between the "flag lot" known as a frontage lot and the street in a way that creates a private driveway. The driveway area therefore looks somewhat like a "pole" or "staff" connecting the lot to the street and can be referred to as the flag pole or flag staff of the flag lot.

Flea market: An occasional or periodic market held in an open area or structure where groups of individual sellers offer goods for sale to the public.

Freight handling facility: A facility providing terminals with the capability of handling a large variety of goods involving various forms of transportation such as rail to truck, truck to truck, or truck to air.

Funeral home: A building used for the preparation of the deceased for burial, the display of the deceased and rituals connected therewith before burial or cremation.

Garage: Deck or other structure, or part thereof, used or intended to be used for parking and storage of vehicles.

Garbage: Waste produced by the handling, processing, preparation, cooking, packaging and/or consumption of animal or vegetable products or other consumable goods, or other matter subject to decay or decomposition which generates noxious gases or offensive odors or that may serve as breeding or food material for rodents or other pests. This term does not include materials composting in closed containers or loose, yard waste which is gathered into a windrow or collected into a contained space.

Garden market: A place of business where retail and wholesale products and produce are sold to the consumer. These centers, which may include a nursery and/or greenhouses, import most of the items sold, and may include plants, nursery products and stock, potting soil, hardware, power equipment and machinery, hoes, rakes, shovels, and other garden and farm variety tools and utensils.

Golf course: A tract of land laid out with at least nine holes for playing a game of golf and improved with tees, greens, fairways, and hazards. A golf course includes a clubhouse and shelters as accessory uses.

Governmental facilities: Buildings, facilities and complexes used for the provision of governmental services, including solid waste, recycling, building maintenance, vehicle maintenance, administrative offices, warehousing and storage.

Green building: Buildings sited, designed, constructed and operated to enhance the well-being of occupants and to minimize negative impacts on the community and natural environment.

Greenhouse, accessory structure: An accessory structure constructed of rigid materials for both the roof and sides are permitted under accessory structure guidelines in this land use code.

Greenhouse, commercial: A building whose roof and sides are made largely of glass or other translucent material and in which the temperature and humidity can be regulated for the cultivation of plants for sale.

Greenway: A dedicated and accepted public right-of-way for non-motorized transportation or as a linear open space established for conservation (usually along a natural corridor such as a riverfront, stream valley or ridgeline, or over land along a railroad right-of-way converted to recreational use, a canal, scenic road or other route identified in the town's greenway master plan).

Greywater, also known as sullage, is non-industrial wastewater generated from domestic processes such as dish washing, laundry and bathing. Greywater comprises wastewater generated from all of the house's sanitation equipment except for the septic tank (water from toilets is blackwater, or sewage).

Grocery or supermarket: An establishment which primarily sells a variety of food and general supplies for the table and other household uses.

Group home: A facility which provides resident services to seven or more individuals of whom one or more are unrelated. These individuals are provided services to meet their needs such as halfway houses and foster homes so long as they house seven or more individuals and are distinct from group homes from developmentally disabled adults or adult care homes. Similar facilities providing care for less than seven individuals shall be treated as a single-family residence under zoning district regulations.

Habitable space: Any room or enclosed floor space used or intended for use for living, sleeping, cooking, or eating, including kitchens, but not including bathrooms, halls, corridors, pantries, storage space, or closets.

Health care services: Facilities whether public or private, principally engaged in providing health maintenance and treatment of mental or physical conditions, including medical or dental clinics, or doctors' offices. This definition shall also include certified massage therapists, acupuncture specialists and chiropractors who are licensed by the State of North Carolina.

Health club/fitness center: An establishment that provides facilities for aerobic exercises, running and jogging, exercise equipment, game courts, swimming facilities, and saunas, showers, massage rooms, or lockers.

Heavy timber construction: A type of construction in which the exterior walls are made of noncombustible materials and the interior structural building elements are of solid or laminated wood. To be considered heavy timber construction, supporting wood columns and roof framing shall not be less than six inches in width and eight inches in depth while floor framing members shall not be less than six inches in width and ten inches in depth. (See fire district overlay, chapter 4).

Heritage crafts: An enterprise that involves the production, sale, demonstration or teaching of a handcraft such as pottery, instrument making, spinning and dying yarn, hand weaving or woodworking using traditional methods.

Historic site: A structure or place of historic and cultural significance and designated as such by the Town of Black Mountain or by state or federal historic preservation agencies.

Home occupation: An occupation conducted in a dwelling unit or accessory building that is incidental and subordinate to its use for residential purposes by its occupants, and causes no change in the exterior of the dwelling.

Hospital: An institution providing health services primarily for human in-patient medical or surgical care for the sick or injured and included related facilities such as laboratories, out-patient facilities, and staff offices which are in an integral part of the facility. This term includes sanatorium.

Hotel or inn: A facility offering lodging accommodations to the general public and providing additional services, such as restaurants, meeting rooms, entertainment, and recreational facilities.

Impact fee: A fee imposed on a development to help finance the cost of improvements or services according to the direct or indirect effects of a proposed development on town services, infrastructure, or community goals.

Increased fire hazard: An increase in the volume of combustible material contained in an erected, repaired, altered or moved structure that is not offset by the installation of additional protection features; or changes in the building features that can increase fire movement from one building to another such as increasing the number of openings in exterior walls.

Industrial park: A tract of land, used primarily for industrial and related uses, that is under unified control and is planned, and developed as a whole in a single development operation or programmed series of development stages. The development may include streets, circulation ways, utilities, buildings, open space, and other site features and improvements.

Infestation: The presence within or around a dwelling of any insects, rodents, or other pests in such a manner as to threaten the health, safety or welfare of the occupants or public, or to undermine the integrity of the structure.

Ingress: Access or entry.

Instructional services or studios: Businesses with the function to provide classes and instruction, including, but not limited to, the martial arts, music, dance, specialized trade schools or visual arts and which are not subject to state licensing as public or non-public educational facilities (see educational facility).

Junkyard or salvage yard: The use of any lot, parcel, building, or structure, or part thereof, used primarily for the storage, collection, processing, purchase, sale, salvage or disposal of discarded items including recyclable or non-recyclable material such as paper, scrap metal, and machine parts. See also automobile wrecking/salvage.

Laboratories and research facilities: A building or group of buildings in which are located facilities for scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

Land, vacant: A lot or parcel of land that is partially or fully prepared for development (i.e., graded, utilities installed, access drive installed) on which no improvements that have been permitted or require permitting have been constructed.

Landscape: Lawns, trees, plants, and other natural materials, such as rock and wood chips, and decorative features, including sculpture, patterned walks, fountains, and pools.

Laundromat: Establishments primarily engaged in operating facilities with coin-operated or similar self-service laundry for customer use on the premises. (Does not include dry-cleaning).

LEED: "Leadership in Energy and Environmental Design:" A voluntary, consensus-based national standard for developing high-performance, sustainable buildings. This program is sponsored by the U.S. Green Building Council.

Legislative decision: The adoption, amendment, or repeal of a regulation, including the decision to approve, amend, or rescind a development agreement.

Legislative hearing: A hearing to solicit public comment on a proposed legislative decision.

Loading zone or space: Space designated for pickups and deliveries and scaled to delivery vehicles, including tractor-trailers.

Lot: A portion of a subdivision, or any other parcel of land, intended as a unit of transfer of ownership or for development.

Lot, corner: A lot located at the intersection of two or more streets or located where one street makes an angle greater than 80.

Lot depth: The mean horizontal distance between the front and rear lines.

Lot line: A line of record bounding a lot that divides one lot from another lot or from a public or private street or any other public space.

Lot width: The mean horizontal distance between the two side lot lines.

Low-density project: A project that has no more than two dwelling units per acre or 24 percent built-upon areas (BUA) for all residential and non-residential development.

Lumber yard: An area used for the storage, distribution, and sale of finished or rough-cut lumber and lumber products, but not including the manufacture or fabrication of lumber, lumber products, or firewood.

Manufactured home or manufactured housing: A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein, or for which the manufacturer has voluntarily filed a certification required by the Secretary of HUD and which complies with the standards of the National Manufactured Housing Construction and Safety Standards Act of 1974.

Manufactured home park: Three or more manufactured homes or park models on a parcel of land or a site containing spaces with improvements and utilities that are leased for the placement of manufactured homes or park homes for residential purposes and that may include services and facilities for the residents.

Manufacturing or manufacturing assembly: Establishments engaged in the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the fabrication of products, and the blending of materials, such as lubricating oils plastics, resins or liquors and which may take place indoors or out.

Manufacturing, light: Manufacturing activities taking place entirely indoors, including storage, and which do not emit any odor, noise, vibrations or chemicals outside of the building in which it is located.

Master plan: A comprehensive, long-range plan guiding the development of a tract of land or subdivision.

Medical clinic: A facility providing medical, psychiatric, or surgical service for sick or injured persons exclusively on an out-patient basis, including emergency treatment, diagnostic services, training, administration, and services to outpatients, employees, or visitors. The term "clinic" includes immediate care facilities, where emergency treatment is the dominant form of care provided at the facility.

Meeting hall: A building designed for public assembly containing at least one room of at least 2,400 gross square feet.

Micro-brewery: An establishment engaged in the production and distribution of beer and other fermented malt beverages with a capacity not to exceed 5,000 barrels per year. The establishment may include areas for demonstration, education, tasting, and other uses permitted in the district in accordance with state and local laws.

Micro-distillery: An establishment engaged in the production and distribution of spirituous beverages with a capacity not to exceed 30,000 gallons per year. The establishment may include areas for demonstration, education, tasting and other uses permitted in the district, in accordance with state and local laws.

Micro-winery/cidery: An establishment engaged in the production and distribution of wine, cider, and other fermented fruit beverages with a capacity not to exceed 30,000 gallons per year. The establishment may include areas for demonstration, education, tasting, and other uses permitted in the district, in accordance with state and local laws.

Mixed-use structure: A building containing residential in addition to non-residential uses.

Motel: An establishment providing sleeping accommodations with a majority of all rooms having direct access to the outside without the necessity of passing through the main lobby of the building.

Multi-family dwelling: A single building containing three or more dwelling units.

Multi-use building: A building containing two or more distinct uses.

Mural: A graphic displayed on the exterior of a building, generally for the purposes of decoration or artistic expression, including but not limited to painting, fresco, or mosaic but excluding any commercial name, brand or message.

Neighborhood fueling facility: A facility for fueling vehicles be it gas, electric, or other fuel, which serves adjacent residential areas and accessory to a convenience store, which is designed to be compatible within a residential area in terms of design, lighting and hours of operation. It may also have additional accessory uses that provide neighborhood services.

Newsrack: A self-service, coin-operated or free dispenser installed, used, or maintained for the display and sale of newspapers, periodicals, or other published material, including real-estate, arts, or other journals.

Nonconforming: The state of not complying with the current ordinance. This term may apply to a lot, structure, or use which was lawful prior to the adoption, revision or amendment of the ordinance but that now fails by reason of such adoption, revision, or amendment, to conform to current development regulations.

Nursing care institution: A licensed healthcare facility, however named, governmental or non-governmental, which provides in-patient care to six or more non-related persons for whom planned and continued medical or nursing attention, or both, are indicated in contrast to the occasional or incidental care provided in congregate care facilities. A nursing care institution may be designed and marketed specifically for the elderly, physically handicapped, or both, but not specific for mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)(b).

Occupant: Any person living, sleeping, cooking or eating in, or having actual possession of a dwelling.

One-year, twenty-four-hour storm (1-year, 24-hour storm): A 24-hour rainfall of intensity expected to be equaled or exceeded, on average, once in 12 months.

Open space: Any parcel or portion thereof or area of land essentially left in or returned to a natural state and set aside, dedicated or reserved for ecological or recreational purposes for public or private use.

Outdoor theater: An establishment for the performing arts with open-air seating for audiences. Such establishments may include related services such as food and beverage sales and other concessions.

Owner or landowner: The holder of the title to land in fee simple. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.

Park: A tract of land designated and used by the public for active and passive recreation.

Park models or park homes: Recreation vehicles designed as living quarters for camping or seasonal habitation and built on a single chassis, mounted on wheels and having a gross trailer area not exceeding 400 square feet of living area. These are typically built with modular construction and are distinct from manufactured homes.

Party of interest: Any individual, corporation or entity having interest of record in a dwelling or property.

Pier: A post, pole or column of masonry, concrete, steel or lumber extending from a footing to and supporting the building or portion thereof.

Place of worship: A building or group of buildings or structures that by design and construction are primarily intended for conducting organized religious services and associated accessory uses. The term includes, but is not limited to, free-standing churches, synagogues, and temples, and to places of worship located within shopping centers or other buildings. This definition does not include nor is it intended to limit the use of private homes for religious practices, prayer meetings, or other religiously oriented uses as long as the use can conform to the same restrictions on traffic, parking and neighborhood impacts as a home-based business. Child care centers, schools, and recreational facilities developed as a part of the place of worship shall meet the standards for these individual uses as set forth for the zoning district in which they are located.

Planned unit development (PUD): A development of land under unified control that is planned and developed as a whole in a single development operation or programmed series of development stages, including developments permitted as "unified housing developments" and "unified business developments." The development may include streets, circulation ways, utilities, buildings, open spaces and other site features and improvements. These may include various types of residential density and may or may not include a mixture of uses where the lot may or may not be divided or retained in single ownership.

Plat, final subdivision: The final map showing the boundaries and location of individual properties and streets on which the exact subdivision plan is presented for approval and which, if approved, will be financially guaranteed or submitted to the county register of deeds for recording.

Plat, preliminary subdivision: A tentative subdivision plan, in lesser detail than the final plat, indicating the approximate proposed layout of a subdivision as a basis of study and consideration prior to the installation of improvements.

Playground: An active recreational area with a variety of facilities, including equipment for younger children as well as court and field games.

Playhouse: A freestanding structure, exclusively for the use of children, with a maximum height of 12 feet and in an area not to exceed 120 square feet.

Plumbing: Any and all facilities connecting to water, sewer or gas lines.

Positive drainage: The construction of systems that slope in a way that allows for water to be directed away from the structure.

Premises: A building together with its immediate and adjacent grounds.

Principal building: A building in which is conducted the principal use of the parcel on which it is situated.

Principal use: The primary purpose or function that a parcel serves or is intended to serve.

Private clubs: Private organizations or business establishments using membership as a prerequisite to the purchase and consumption of alcoholic beverages on the premises, or using membership as a prerequisite to admission to the activities of the business if the purchase and consumption of alcoholic beverages on the premises is a part of the business or offered in conjunction with the principal activities of the business.

Private street: A non-public road for vehicular traffic, serving four or more lots.

Professional office: The office of a member of a recognized profession maintained for the conduct of that profession, such as those providing real-estate, legal, accounting, architecture, medical or survey services.

Quasi-judicial decision: A decision involving the findings of facts regarding a specific application of development regulations and that requires the exercise of discretion when applying the standards of the regulation.

Reasonable routine maintenance: Replacement of existing portions of a structure with like materials and design so as to avoid deterioration or further deterioration of the structure.

Recreation services, indoor: Establishments engaged in providing indoor recreation services. Indoor services may include public or private health or exercise clubs, tennis or other racquet ball courts, swimming pools, YMCA's or other similar uses which are enclosed in buildings and are operated on a fee or membership basis primarily for the use of persons who do not reside on the same lot as that on which the recreational use is located. Indoor recreation structures may include accessory uses, such as snack bars, pro shops, and locker rooms, which are designed and intended primarily for the use of patrons of the principal recreational use.

Recreation services, outdoor: Establishments engaged in providing outdoor recreation services such as public or private golf courses, country clubs, swimming pools, tennis courts, ball fields and ball courts, which are not enclosed in buildings and are operated on a commercial or membership basis primarily for the use of persons who do not reside on the same lot as that on which the recreation use is located. Outdoor recreation may include accessory uses, such as snack bars, pro shops, and clubhouses which are designed and intended primarily for the use of patrons of the principal recreational use.

Redevelopment: Any rebuilding activity other than a rebuilding activity that results in no net increase in built upon area and provides equal or greater stormwater control than the previous development.

Repair or alteration: Repairs or alterations to a building that exceed reasonable routine maintenance; that cost more than 50 percent of the current value of the building as listed in the assessed tax value; or that change the exterior finish, exterior configuration, number of openings in exterior walls, or the footprint of the building. If the structure has been damaged and is being repaired, the value of the structure shall be interpreted to mean the value before the damage or destruction occurred. (This term does not include emergency repairs needed to secure the structure from water, storms, or unauthorized access).

Residence: A structure or part of a structure containing dwelling units or rooming units, including single-family or two-family houses, multiple dwellings, boarding or rooming houses, or apartments. Residences do not include: such transient accommodations such as transient hotels, motels, tourist cabins, dormitories, and recreational vehicles.

Resident: An individual whose principle place of living and sleeping is in a particular location is a resident of that location.

Restaurant, brew pub/tavern: An establishment in which beer, ale, porter and other fermented malt beverages are produced and sold onsite as part of a restaurant operation in accordance with state and local laws.

Restaurant, drive-thru: An establishment where food and/or beverages are sold in a form ready for consumption, where a portion of the pick-up and consumption of food may take place from an automobile. This term shall include "fast food" restaurants.

Restaurant, eat-in: An establishment where food and drink are prepared, served, and consumed primarily within the principal building, and which may also prepare food for take-out. Eat-in restaurants may or may not serve beer and wine in conjunction with their food service and in accordance with a state ABC permit.

Restaurant, walk-up: An establishment where food and/or beverages are sold in a form ready for consumption where pick up and consumption of food is designed to take place outside the confines of the structure, and which may also prepare food for take-out. Includes food vendors and stands.

Retail sales: Establishments engaged in selling goods or merchandise to the general public and rendering services incidental to the sale of such goods including tailoring or repair. This includes, but is not limited to, specialty shops and stores as well as:

Books, news, recordings retail: Establishments primarily engaged in the sale of books, magazines, or recordings for general consumption as opposed to adult entertainment use.

Clothing and personal accessories merchandise retail: Establishments engaged in the sale of personal clothing, jewelry, watches, shoes, luggage, hats, etc.

Drugstore or pharmacy: A store where the primary business is the filling of medical prescriptions and the sale of drugs, medical devices and supplies, and nonprescription medicines, but where non-medical products may be sold as well.

Florist: Establishments primarily engaged in retailing cut flowers, floral arrangements, and potted plants purchased from others and including on-site preparation.

Garden center: Establishments primarily engaged in retailing nursery and garden products, such as trees, shrubs, plants, seeds, bulbs, and sod that are predominantly grown elsewhere. These establishments may sell a limited amount of a product they grow themselves.

Hardware store: Establishments primarily engaged in the retail sale of a number of basic hardware lines, such as tools, hardware, paint, glass, house wares and household appliances, cutlery and other items.

Musical instruments retail and repair: Establishments engaged in the sale, re-sale and/or repair of musical instruments.

Outlet store: A retail establishment selling a single or limited number of a manufacturer's product.

Right-of-way: 1) a strip of land acquired by purchase, reservation dedication, forced dedication, prescription, or condemnation and intended to be occupied by a roadway, greenway, sidewalk, railroad, utility, storm sewer, or other uses; and 2) the right of one to pass over the property of another.

Rubbish: Solid waste, combustible or noncombustible, excluding food waste, vegetation waste and ashes, which have been discarded from residences, commercial establishments and institutions.

Sanitary sewage: Any liquid waste containing animal or vegetable matter in suspension or solution or the water-carried waste resulting from the discharge of water closets, laundry tubs, washing machines, sinks, dishwashers, or any other source of water-carried waste of human origin or containing putrescent material. See also "greywater."

Sanitary sewage system: Conveyance and treatment of sanitary sewage by the Metropolitan Sewage District, septic systems, or other systems compliant with state building codes.

Screening: A method of visually shielding or obscuring one abutting nearby structure from another by fencing, walls or densely planted vegetation.

Self-service storage facility or mini-storage: A structure containing separate, individual and private storage spaces of varying sizes leased or rented on individual leases for varying periods of time.

Setback: The minimum distance by which any building or structure must be separated from a street right-of-way or lot line. Where no right-of-way is delineated and where property boundaries are located underneath the footprint of an existing road, then setback will be defined as the minimum distance between a building or structure and the edge of the roadway or back of curb. On NCDOT maintained roads where roadway right-of-way is not established, setback is the minimum distance between a building or structure and the back of the maintenance ditch or maintenance area (four feet from the edge of pavement).

Shared housing arrangements/community living: Dwellings, that offer communal areas and services such as housekeeping, transportation, organized social and recreational activities, and other support services for seven or more residents, but excluding assisted living facilities for the elderly or other medical facilities. See also "Group home."

Shopping center: A group of commercial establishments planned, constructed and managed as a total entity.

Short-term rental: Any dwelling or portion thereof that is available for use or is used for accommodations or lodging of guests paying a fee or other compensation for a period of less than 30 consecutive days.

Sidewalk: A paved or otherwise surfaced area designed for pedestrian and wheelchair use.

Sidewalk sign: A sidewalk sign is a movable sign not secured or attached to the ground or surface upon which it is located. This sign type is typically an A-frame or spring-mounted sign.

Sign: Any device, structure, fixture, painting, or visual image using words, graphics, symbols, numbers, or letters designed and used for the purpose of attracting attention or communicating a readable, comprehensive, legible message.

Site plan: A scaled drawing and supporting documents showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on a parcel or parcels of land, which may include site-specific details such as building areas, building height, floor area, setbacks and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review.

Sketch plan: An informal plan, not necessarily to exact scale, indicating salient existing features of a tract and its surroundings and the general layout of a proposed subdivision or development plan for use in technical review and plan development prior to the submittal of a master plan or preliminary plat.

Sleeping room, sleeping unit, or bedroom: A room designated as sleeping or bedroom on the plans and permit application. When no plan or permit application is available, a sleeping room, sleeping unit, or bedroom shall be defined as a room with a closet set up to act as a space for a person to sleep.

Special use permit: A permit issued by the board of adjustment in accordance with the principles, conditions, safeguards, and procedures specified in these regulations to authorize a specific use of land as required by these regulations.

Storm sewer or stormwater sewer: Pipe or conduit used to collect and carry away sewage or stormwater from generating sources to treatment plants, BMPs or receiving streams.

Stormwater: Stormwater from rainfall or snowmelt that runs off the ground or impervious surfaces like buildings, roads, parking lots, etc.

Street: A dedicated and accepted public right-of-way for vehicular traffic. This also includes the terms "roads," or "roadway."

Structure: Anything constructed, installed or portable, the use of which requires a location on a parcel of land, this includes a fixed or moveable building which can be used for residential, business, commercial, agriculture, or office purposes, either temporarily or permanently. "Structure" also includes, but is not limited to, above ground, below ground and permanent swimming pools, cisterns, sewage treatment plants, sheds, and similar accessory construction; however, it does not include landscape features such as ornamental pools, planting boxes, sculpture, birdbaths, open terraces, at-grade bridges and walkways, at-grade slab patios, driveways, small non-permanent shelters for pets, playhouses, open stairs, recreational equipment, flagpoles, underground fallout shelters, air-conditioning compressors, pump houses, wells, mailboxes, outdoor fireplaces, burial vaults, or cemetery marker monuments.

Subdivider: Any person who subdivides or develops any land deemed to be a subdivision as herein defined.

Subdivision: All divisions of a lot, tract, or parcel of land into two or more lots, tracts, parcels, building sites or other divisions when any one of those divisions is created for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of new streets or a change in existing streets.

Subdivision, exempt: The types of land divisions or combinations that are exempt from state and local subdivision regulations (per N.C.G.S. § 160D-802).

Subdivision, major: A subdivision, other than an exempt subdivision, and which requires the extension of public right-of-way and/or public streets, or where the entire tract to be subdivided is greater than five acres, or where the subdivision will result in five or more lots after the subdivision is complete.

Subdivision, minor: A subdivision, other than an exempt subdivision, which involves no new public streets or roads, and where the entire tract to be subdivided is five acres or less in size, and where four or fewer lots will result after the subdivision is complete.

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

Summer camp: A recreation and residential center for children or adults that specializes in outdoor activities and programs and which is accredited or seeking accreditation from the American Camp Association (ACA) or other recognized accreditation service.

Tattoo parlor/body piercing studio: An establishment whose principal business activity, either in terms of operation or as held out to the public, is the practice of one or more of the following: (1) placing of designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments designed to contact or puncture the skin; (2) creation of an opening in the body of a person for the purpose of inserting jewelry or other decoration.

Tavern: An establishment serving alcoholic beverages in which the principal business is the sale of such beverages at retail for consumption on the premises and where sandwiches and snacks may be available for consumption on the premises.

Temporary sign: A sign with or without a structural frame, not permanently attached to a building, structure, or ground and intended for a limited period of display.

Tenant: Any person who occupies a dwelling unit under a verbal or written lease or holds a legal tenancy in a dwelling.

Theater or music hall: A building or part of a building devoted to showing motion pictures or for dramatic, dance, musical or other live performances. Areas for retail sale of food and beverages, including beer and wine in accordance with state ABC permits, are included in this definition as incidental to the primary use.

Townhome: A one-family dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical common fire-resistant walls. Additionally, ownership of a townhome includes the footprint of the unit itself as well as any common areas established as part of the development plan.

Traffic impact study (TIS): A report analyzing anticipated roadway conditions with and without an applicant's development, and recommending appropriate mitigation measures.

Transient: Occupancy of a dwelling unit or sleeping unit for not more than 30 days.

Truck stop: Any building, premises, or land in which or upon which a business, service, or industry involving the maintenance, storage, or repair of commercial vehicles is conducted or rendered, including the dispensing of motor fuel or other petroleum products directly into motor vehicles and the sale of accessories or equipment for trucks and similar commercial vehicles. It may also include overnight accommodations or restaurant facilities primarily for truck crew use.

Undeveloped land: Land in its natural state.

Unfit for human habitation: Conditions exist within a dwelling or dwelling unit which violate or do not comply with the minimum housing standards established by the town.

Unsafe: State of a structure deemed dangerous because of unstable conditions of walls, overloaded floors, defective construction, dangerous wiring or heating systems, inadequate means of egress, susceptibility to fire or other cause or conditions that make the building unsafe for people to enter or live.

Use: The purpose or activity for which land or buildings are designed, arranged, or intended or for which land or buildings are occupied or maintained.

Warehouse or distribution center: A building used primarily for the storage of goods and materials or an establishment engaged in the receipt, storage and distribution of goods, products, cargo or materials, including shipment by boat, rail, air or motor vehicle.

Warehouse, mini: Establishments primarily engaged in renting or leasing space for self-storage. These establishments provide secure space (i.e., rooms, compartments, lockers, containers, or outdoor space) where clients can store and retrieve their goods.

Watershed or natural drainage: The drainage basin, catchments, or area of land that drains water, sediment, and dissolved materials to a common outlet along a stream channel.

Wholesale establishment: An establishment or place of business primarily engaged in selling and/or distributing merchandise to retailers; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies. This is not considered a general commercial use.

Winery/cidery: An establishment engaged in the production and distribution of wine, cider, and other fermented fruit beverages. The establishment may include areas for demonstration, education, tasting and other uses permitted in the district in accordance with state and local laws.

Wood or frame structure: A type of construction whose primary structural elements are formed by a system of repetitive wood framing members, not including heavy timber, metal frame, or masonry construction where the exterior walls are composed of noncombustible materials that support the roof load. (See fire district overlay, chapter 4).

Wood and yard waste facility: An operation which collects, stores and/or processes waste and accumulation of tree branches, tree limbs, bushes, shrubbery, cuttings or clippings usually created as refuse in the trimming or cutting of trees, shrubs or bushes, including parts of trees, plant clippings, prunings, leaves and other discarded vegetative material from yards and gardens. Processing may include chipping or mulching to reduce woody material by mechanical means into small pieces to be used for mulch or fuel.

Yard: An open space that lies between the principal building or buildings and the nearest lot line. The minimum required yard as set forth in the ordinance is unoccupied and unobstructed from the ground upward except as may be specifically provided in the ordinance.

Yard, front: A space extending the full width of the lot between any building and the front lot line and measured perpendicular to the building at the closest point to the front lot line.

Yard, rear: A space extending across the full width of the lot between the principal building and the rear lot line and measured perpendicular to the building at closest point to rear lot line.

Yard, side: A space extending from the front yard to the rear yard between the principal building and side lot line and measured perpendicular from the side lot line to the closest point of the principal building.

Zero-lot line lot: A lot created by the division of property along a shared wall of a single structure, with independent ownership for each unit.

Zone: A specifically delineated area or district in a municipality within which uniform regulations and requirements govern the use, placement, spacing, and size of land and buildings. The terms "district," "zone" and "zoning district" are synonymous and are used interchangeably throughout these regulations.



3.02.10 Minimum Housing

- A. **Purpose.** In accordance with Article 12 of Chapter 160D of the North Carolina General Statutes, and the North Carolina Rental Agreement Act, this section is adopted to protect the health, safety, and welfare of the residents of the Town of Black Mountain by establishing minimum housing standards for all dwellings and to eliminate unsafe housing.
- B. **Applicability.** The provisions of this minimum housing standard are applicable to all existing dwelling units and all dwelling units hereafter constructed, renovated or repaired within the Town of Black Mountain which are used or intended for human habitation.
- C. **Minimum documentation for dwellings and dwelling units.**
1. Every dwelling unit shall comply with all of the minimum housing standards as established by this code. No person shall rent any dwelling or dwelling unit which does not comply with all of the minimum housing standards established by this code.
 2. No person shall rent any dwelling or dwelling unit which does not comply with all of the minimum housing standards established by this code.
 3. Owners or agents of renter occupied dwellings may voluntarily provide one of the following to the town as documentation to ensure compliance:
 - a. A certificate of occupancy issued within the previous three years; or
 - b. Documentation of a photograph of the "red label" indicating compliance with the HUD Manufactured Home Construction and Safety Standards within the previous three years; or
 - c. Documentation from HUD-Section 8 that the structure is presently in compliance with the rental criteria for safety under Section 8 Guidelines; or
 - d. Documentation of a third-party inspection (such as that of a real estate transaction, loan, or annual inspection (not an appraisal report but a home inspection)) completed within the previous three years and identified issues corrected in compliance with this minimum housing code; or
 - e. A safety checklist as completed by the inspector or other qualified building inspector issued within the previous three years.
- D. **Minimum standards of fitness for dwellings and dwelling units.** Notwithstanding any other methods available for determining whether a dwelling is fit for human habitation, the inspector shall apply the minimum standards set forth below:
1. *Street address.* Each dwelling shall bear a street number of a color contrasting with the surface on which the number is mounted. Such number shall be of sufficient size to be visible from the nearest street but not less than two inches in height. If the dwelling is not visible from the nearest street, a sign or standard bearing the address number shall also be placed on the principal street access point to the dwelling, such number to meet the standards set forth herein.
 2. *Light and ventilation.*
 - a. **Windows.** Every habitable room shall have at least one window or skylight facing directly to the outdoors. Each window required for ventilation of habitable rooms shall be capable of being easily opened or closed and secured in position by window hardware.
 - b. **Mechanical ventilation.** Every habitable room may have a means of mechanical ventilation or the ability to demonstrate alternate means of ventilation.
 - c. **Lighting in halls and stairways.** Every hall and stairway of every dwelling shall be lighted including exterior stairways and stairways in halls and public spaces.

3. *Electrical systems.*

- a. Electrical service. The minimum capacity of the service supply and the main disconnect switch shall be sufficient to adequately carry the load required in accordance with the state electrical code.
- b. Lights and outlets.
 - i. Every habitable room or space shall contain at least two separate and remote duplex receptacle outlets.
 - ii. Every hall, water closet compartment, bathroom, laundry room or furnace room shall contain at least one ceiling-mounted or wall-mounted fixture outlet. For purposes of this section, a laundry closet shall be considered a laundry room.
 - iii. In bathrooms, the lighting outlet shall be controlled by a wall switch or fixture pull-chain. In addition to the lighting outlet in every bathroom and laundry room, there shall be provided at least one receptacle outlet. Any new or replacement bathroom receptacle outlet shall have ground fault circuit interrupter protection.
 - iv. All outlets, switches, wiring and light fixtures shall be safe and operable. No extension cords shall be spliced or used as fixed wiring in a dwelling. Electrical odor, flickering lights, visibly frayed wiring, broken switch plates or outlet plates or failure of circuit-tester check shall be evidence of an unsafe electrical system.

4. *Exterior and interior.*

- a. Foundation. The building foundation system shall be maintained in a safe manner and capable of supporting the load which normal use may cause to be placed thereon. Beneath the dwelling, there must be firm, reasonably dry ground ("reasonably dry" means no mud, standing water, running water or evidence of same). Manufactured homes shall be set up and secured as required by the state building code's regulations for manufactured housing.
- b. Roofs. Roof shall be structurally sound and maintained in a safe manner and have no defects which might admit rain or cause dampness in the walls or interior portion of the dwelling. The following may constitute evidence of defects:
 - i. Missing shingles;
 - ii. Flashing(s) missing;
 - iii. Roof deflection deeper than one-sixth of the depth of the rafter and/or cracked rafters;
 - iv. Damage to ceiling (ceiling plaster loose or falling, brown spots, etc.), sheet rock hanging, etc. in rooms below roof; or
 - v. Fire damage.
- c. Stairs, porches and appurtenances. Every inside and outside stair, porch or any appurtenance thereto shall be safe to use and capable of supporting the load that normal use may cause to be placed thereon and shall be kept in sound condition and good repair. Stairs and steps shall be free of holes, grooves, and/or cracks large enough to constitute accident hazards. Stair coverings shall be securely mounted and shall not interfere.

5. *Structure supports.*

- a. Every structural element of the dwelling shall be maintained in a structurally sound condition and show no evidence of deterioration which would render it incapable of carrying normal loads. Termites, termite damage, fire damage, absence of footing or cracked or split wood structure supports are examples of evidence of deterioration.

- b. When additional direct support is required, piers shall be used under girders, at walls or other primary support points. Stiff knees shall not be used under girders, at walls or other primary support points, but may be used for indirect support only.
6. *Space requirements.*
- a. Required space. Every dwelling shall contain at least the minimum room size in each habitable room as required by the state building code.
 - b. Required space in sleeping rooms. In every dwelling unit and in every rooming unit, every room occupied for sleeping purposes shall contain at least 70 square feet of floor area for each intended occupant.
 - c. Ceiling height. Habitable rooms other than kitchens, storage rooms and laundry rooms shall have a ceiling height of not less than seven feet. Hallways, corridors, bathrooms, water closet rooms, and kitchens shall have a ceiling height of not less than seven feet measured to the lowest projection from the ceiling. If any room in a dwelling has a sloping ceiling, the prescribed ceiling height of the room is required in only one-half of the room area. No portion of the room measuring less than five feet from the finished floor to the finished ceiling shall be included in any computation of the minimum room area.
7. *Occupancy below grade.* No basement or cellar space shall be used as a habitable room or dwelling unless:
- a. The floor and walls are resistant to the leakage of underground and surface runoff water and show no evidence of recent water leakage or accumulations;
 - b. An easily accessible means of fire escape in addition to the basement or cellar stairs is provided; and
 - c. One operable means of emergency escape and rescue opening as prescribed per the state building code.
8. *Heating systems.*
- a. Every dwelling shall have heating facilities which are properly installed, are maintained in safe and good working conditions, and are capable of safety and adequately heating all habitable rooms and bathrooms in every dwelling regulated herein to a temperature of at least 68 degrees F (20 degrees C) at a distance of three feet above the floor level, at an outside temperature of 20 degrees Fahrenheit. Each heating system shall have at least one readily adjustable control for regulations of living space temperatures in each dwelling unit. Radiator control knobs in good working order shall be regarded as a readily-adjustable control.
 - b. Where a central heating system is not provided for a dwelling, the dwelling shall be provided with properly installed baseboard electric heat, properly installed and properly vented wood or fossil fuel(s), or unvented natural gas heaters having oxygen depletion sensors listed for residential use by UL, ETL, or other North Carolina recognized testing laboratories and installed in accordance with the manufacturer's instructions.
 - c. The following heating devices do not meet the requirements of this section:
 - i. Portable electric heating units; and
 - ii. Unvented fuel-burning heaters.
 - d. The use of unvented fuel-burning heaters is prohibited in any bedroom.
9. *Chimneys.*
- a. Chimney inspections shall be conducted by a certified chimney sweep or masonry contractor. All other heating system flue inspections shall be conducted by a licensed mechanical contractor.

- b. Unless they are closed off and cannot be used, chimneys must be safe for use as specified and intended with:
 - i. Flue liner intact;
 - ii. Chimney mortar and bricks secure;
 - iii. Flue unobstructed;
 - iv. Fireplace bricks intact; and
 - v. Stove piping placed and secured with:
 - (A) Minimum 18-inch masonry surrounding thimble as clearance separation from combustible; or
 - (B) Minimum nine-inch air separation for insulated listed stove piping; or
 - (C) Minimum two-inch air separation for insulated listed stove piping with one-inch of air space between the inner and outer chimney components; and
 - (D) As otherwise described in the National Fire Protection Association Standards 211: Chimneys, Fireplaces, Vents and Solid Burning Fuel Appliances.
 - vi. Chimneys that do not meet these standards shall be either repaired or sealed.
- E. **Unsafe conditions.** The inspector shall determine that a dwelling is unsafe and represents a threat to life and property, if any of the following conditions exist:
 - 1. No operating heating facilities that would maintain a minimum room temperature of 68 degrees at a point three feet above the floor in all habitable rooms with an outside temperature of 20 degrees Fahrenheit.
 - 2. No potable water supply.
 - 3. No hot water supply.
 - 4. No electricity.
 - 5. Presence of overloaded, non-isolated electrical circuits, or unsafe or exposed electrical wiring.
 - 6. Lack of properly functioning sanitary facilities.
 - 7. The presence of raw sewage or open sewer inside the dwelling, whether from broken or plugged fixtures or pipes inside the dwelling, or migrating into the dwelling from the outside, or the presence of inadequate ventilation of sewer systems.
 - 8. Presence of unsafe structural conditions:
 - a. Foundations, foundation walls, piers or other foundation supports; exterior walls, interior structural walls, joists, rafters, sills, floors, and other structural members which are not capable of supporting the load which normal use would cause to be placed thereon;
 - b. Roofs, flashing, exterior walls, basement walls, foundation walls, floors, hatchways, windows, which are not maintained so as to be in good condition;
 - c. The ground used as a floor or any wood floors that are placed on the ground;
 - d. Outside or inside stairs, steps, porches, landings and other parts or appurtenances which are in such condition as may increase the hazards of collapse, tripping, falling, rodent or pest infestation, fire or otherwise endanger the health or safety of the occupants, including broken windows; or
 - e. Floors, interior walls, or partitions, the ceilings of all rooms, closets, and hallways which are not finished or covered with suitable material or which are not maintained free of flaking paint.
 - 9. Presence of uncontained flammable or combustible liquids or gases, poisonous solids, liquids or gases that threaten life or health and that are the property of the owner.

10. Missing portion of roof or ceiling which allows drafts, severe bulging, or large amounts of loose or falling surface materials such as plaster.
11. Chimneys and other heating systems that do not meet minimum standards.
12. The building is a physical threat due to the immediate possibility of collapse.
13. The primary means of exit in the event of emergency is structurally unsafe.
14. Interior wall sheathing or sheeting that is not present or has been removed causing diminished protection from the spread of fire from story to story or from habitable spaces to bedrooms.
15. Insulations and weatherproofing which did not meet the state building code at the time of construction or is not properly maintained.
16. Every dwelling shall be provided with an approved smoke detector on each level of the dwelling and in all stairwells, hallways, and other common areas of multiple unit dwellings. Dwellings that utilize gas shall also be provided with a carbon monoxide detector. Detectors shall be installed in accordance with the manufacturer's recommendations and listing and when activated shall provide an audible alarm. The detector shall be listed in accordance with Underwrites Laboratories Listing 217 ("Single and Multiple Station Smoke Detectors"). Safety standards for detectors recommend that these should be tested on an annual basis at a minimum.

F. Enforcement.

1. *Notification in writing of needed repairs for rental units.* North Carolina Law requires that tenants request repairs in writing. The Town of Black Mountain will require evidence of written communication from the tenants to the landlord, owner, or agent. The landlord, owner, or agent shall be given 30 days to make repairs to unsafe conditions before enforcement procedures are initiated. This applies to units that are rentals. Owner-occupied units are not required to meet this requirement.
2. *Inspections allowed.* The inspector may inspect a residential structure when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist. Reasonable cause includes any one or more of the following:
 - a. The property has a history of more than two verified violations of the building code, fire code, or minimum housing code within a 12-month period;
 - b. There has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected;
 - c. The inspection department has actual knowledge of an unsafe condition within the building; or
 - d. Violations of the local ordinance or codes are visible from the outside of the property
3. *Inspections shall occur during reasonable hours, upon presentation of proper credentials.*
4. *Notice of violation.* If it appears to the inspector that the dwelling or dwelling unit does not meet the minimum standards contained in this code, the inspector shall issue a written notice of violation pursuant to the provisions of section 1.10.6. The owner shall perform such work as is necessary to bring the dwelling unit into compliance within 30 calendar days if the building is occupied. The building inspector may grant extensions of time for completion of the required measures, but shall not be obligated to do so.
5. *Waivers.*
 - a. In the event that the building inspector issues a notice of violation as to one or more plumbing, electrical, mechanical, structural, or fire safety components, the inspector may approve such components without further correction upon receipt of a report from an appropriately licensed contractor, architect, or engineer affirming that such components are in compliance with this code. Such report must be provided within 15 days after the notice of violation is served.

- b. The inspector may waive any violation of this code when all of the following conditions are met:
 - i. The condition for which the waiver is sought is not one of the conditions set forth in (section 2.2.5 (unsafe conditions) of this code; and
 - ii. The condition for which the waiver is sought is an element of the fundamental and original construction of the dwelling. "Fundamental and original construction" includes foundation dimensions, ceiling height, organization of habitable space, and any other condition governed by the original structure of the dwelling; and
 - iii. There exists a demonstrable alternate means of meeting the intent of this code.
- 6. *Appeals.* The property owner or other parties in interest may appeal the determination of the inspector to the board of adjustment in accordance with section 1.7.2, provided however that the notice of appeal must be filed within ten days from the rendering of the inspector's determination or service of the order, whichever shall last occur. The board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter, and, to that end, has all the powers of the inspector
- 7. *Violations, remedies and penalty.* The owner of any dwelling or dwelling unit or other. The concurring vote of four members is required to reverse or modify the decision of the inspector. The board may also, when unnecessary hardships would result from carrying out the strict letter of this code, adapt the application of the code to the necessities of the case to the end that the spirit of the code is observed, public safety and welfare secured, and substantial justice done.



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.

- I. 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.*
- a. Terms of Rental. Any short-term rental not operated by a professional property management company or booked through an online rental service is required to complete an occupancy and sales tax remittance form, with fees payable to the Buncombe County Tourism Development Authority.
 - b. Life and Safety.
 - i. All Short Term Rentals are required to get an annual fire safety inspection as required by North Carolina General Statute. These inspections will include:
 - (A) Functioning smoke detectors
 - (B) Functioning CO2 detectors if the home has gas appliances or an attached garage
 - (C) Emergency escape ladder in second story and higher bedrooms
 - (D) Require public safety and non-emergency numbers to be posted as follows:
 - (1) Fire Department
 - (2) Police Non-emergency number
 - (3) Physical address of the property
 - c. Posted Information. A local contact (within 60 miles and functioning as owner or property manager) must be posted in the unit and on file with the Town on the zoning permit.
 - d. Neighborhood Character. In order to maintain neighborhood character, all short term rentals must:
 - i. Post information about garbage and recycling for management of wildlife, including bears.
 - ii. Post information about the Town Noise Ordinance requirements.
 - iii. Have bear-proof outdoor trashcans.

- iv. Have sufficient parking for guests on site in driveways and garages.
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.