



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 August 28, 2023
Date: August 18, 2023

The **Town of Black Mountain Planning Board** will meet on **Monday, August 28, 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 July 24, 2023, and August 17, 2023;
3. Conditional Zoning Request – Montreat Road; and
4. Development Agreement – Montreat College.

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
Brian Gulden, Town Attorney



PUBLIC NOTICE **AVISO PÚBLICO**

BLACK MOUNTAIN PLANNING BOARD

REGULAR MEETING **REUNIÓN ORDINARIA**

Monday, August 28, 2023, at 6:00 p.m.
Lunes 28 de agosto de 2023, a las 6:00 p.m.

The Black Mountain Planning Board will meet for their regular monthly meeting on **Monday, August 28, 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 28 de agosto de 2023 a las 6:00 p.m.** en el Ayuntamiento, 160 Midland Avenue, Black Mountain, N. C.

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

Jennifer Tipton
Senior Admin

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

Posted to the Town Bulletin Board 07/28/2023

www.townofblackmountain.org



**Planning Board Regular Meeting
August 28, 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 July 24, 2023, as written [or as amended]
To adopt the minutes of August 17, 2023, as written [or as amended]

IV. OLD BUSINESS

V. NEW BUSINESS

- Conditional Zoning Request – Montreat College
- Development Agreement – Montreat College

VI. PUBLIC COMMENT

VII. COMMUNICATION FROM PLANNING BOARD

VIII. COMMUNICATION FROM STAFF

IX. ADJOURNMENT

TOWN OF BLACK MOUNTAIN PLANNING BOARD

The Black Mountain Planning Board held its regular meeting on Monday, July 24, 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
Pam Norton, Vice Chair
Joe Laudenslayer
Rick Earley
Lauronda Teeple
Kathy Phillips

Absent:

Chas Fitzgerald

Staff:

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

The meeting was called to order at 6:04 p.m. and duly constituted and opened for business with a quorum of five (5) members. Member Kathy Phillips arrived late.

II. ADOPTION OF AGENDA

Jessica Trotman made one change to the agenda to add a proposed text amendment to the primary fire district as the first item under new business. Chris Collins made a motion to adopt the agenda as amended. The motion was seconded by Lauronda Teeple and approved by a vote of 5-0.

III. ADOPTION OF MINUTES

Pam Norton made a motion to adopt the minutes of June 26, 2023, as written. The motion was seconded by Rick Earley and approved by a vote of 4-0 with Chris Collins abstaining from voting.

IV. NEW BUSINESS

1. Proposed Text Amendment – Primary Fire District

Open Oven has petitioned the Town to be removed from the Primary Fire District. The proposed text amendment removes the parcel (102 Church Street) and references updated parcel identification numbers. Fire Chief John Coffey provided an email stating the Fire Department's concern with removing the parcel due to increased fuel loads that will contribute to fire extension to adjacent exterior exposures. The removal from the Primary Fire District would allow the use of combustible materials and reduce the distance allowed to the property lines. The board expressed some concerns about the combustible materials, but because it is a detached structure on the edge of the district, they were not opposed to the request. Chris Collins made a motion to recommend the removal of 102 Church Street from the Primary Fire District and that the amendment is consistent with the comprehensive plan and in the public interest because it

Planning Board Regular Meeting
July 24, 2023

promotes design principle five and assumes the same built to form as other structures in the immediate vicinity. The motion was seconded by Joe Laudenslayer and approved by a vote of 6-0.

2. Proposed Text Amendment – Conditional Zoning

When the conditional zoning section was created, it did not include TND and ICD because they were site-specific master planned projects. The idea to turn TND and ICD to conditional zoning districts came about during the UDO process to clean-up and administer these districts. The amendment adds these two districts to the list of allowed districts and this amendment will also retire the TND and ICD districts as stand along zoning districts. Chris Collins made a motion to recommend the text amendment as written and it is consistent with the comprehensive plan and in the public interest because it promotes design principles one and two and allows the town the tools to enable smart and orderly growth. The motion was seconded by Pam Norton and approved by a vote of 6-0.

3. Work Session for UDO

The board only provided comments for chapter five since chapter four is signs and those were just updated, and chapter six is environmental regulations that we cannot change, and a little more time was needed for chapter eleven which is definitions. The comments for chapter 5 are as follows:

- Section 5.01.01 B(3) – delete
- Section 5.01.02 B(4) – expand the sentence to add
- Section 5.02.01 A – delete 1 through 6
- Section 5.02.01 B – add Section 5.03 to this section and then delete 5.03
- Section 5.02.03 A(5) – change to where required
- Section 5.02.03 A(9) – change should to shall
- Section 5.02.03 B – correct wording and add DOT
- Table 5.02.04 – delete tables and reference standards and details manual
- Section 5.02.06 B – change 1,320 to 650
- Section 5.02.07 A – remove
- Section 5.02.07 B(1) – remove
- Section 5.02.07 B(3) – delete
- Section 5.02.07 C(4) – define adequate frontage
- Section 5.02.07 D – delete figure
- Section 5.02.08 H(1) – delete
- Section 5.02.10 B(1) – change developing to subdividing
- Section 5.02.10 E – delete
- Section 5.02.10 D(6) – delete most of sentence
- Section 5.02.13 E(2) – comment to landscaping chapter
- Section 5.02.14 B(2) – change 50 to 5
- Section 5.02.14 D(2)(d) – change shall to may
- Section 5.05.02 B(2) – delete

We will hold another workshop on August 17th and we will work on short term rentals, definitions, multifamily, infill, and duplexes.

Planning Board Regular Meeting
July 24, 2023

V. OLD BUSINESS

None.

VI. PUBLIC COMMENT

None.

VII. COMMUNICATION FROM PLANNING BOARD

None.

VIII. COMMUNICATION FROM STAFF

None.

VX. ADJOURNMENT

With no further business, the meeting was adjourned at 7:56 p.m.

Prepared by:

Chris Collins, Chair

Jennifer Tipton, Senior Admin

TOWN OF BLACK MOUNTAIN PLANNING BOARD

The Black Mountain Planning Board held a workshop meeting on Thursday, August 17, 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
Pam Norton, Vice Chair
Joe Laudenslayer
Lauronda Teeple
Kathy Phillips
Chas Fitzgerald

Absent:

Rick Earley

Staff:

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

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

II. ADOPTION OF AGENDA

Pam Norton made a motion to adopt the agenda as presented. The motion was seconded by Joe Laudenslayer and approved by a vote of 6-0.

III. ADOPTION OF MINUTES

There were no minutes to adopt.

IV. NEW BUSINESS

1. UDO Section Review – STR's, Multi-family, Infill, Duplexes, and Definitions **Short Term Rental Draft Language**

- Restructure sentence in 1a to read clearer. Use Rick Earley's suggestion for sentence.
- Add general statute number to life safety inspection requirement.
- Add that life safety inspection will be through the Fire Marshal's office.
- Move b (d) to c for posting of information.
- Move d (b) to c for posting of information.
- Add that information should be posted in a conspicuous place.
- Add that address should be visible from a driveway or public street.
- Parking requirements – would like to see:
 - 1 space per bedroom
 - No parking in right-of-way
 - Parking should be on an improved surface
- Add containment devices to section about trashcans
- Clarify that only a zoning permit is required
- Add property to section about person being within 60 miles

Planning Board Workshop
August 17, 2023

Multi-family Dwelling Draft Language

- Delete neighborhood-scale in first sentence
- Change applicability to density
- Add applicability to D
- Separate parking requirements into site standards and include #'s 8, 9, and 10 for site requirements
- Change two dwelling units to one structure with two dwelling units
- Add opaque fence to screening section
- Change required to minimum in 7B

Infill Draft Language

- Under generally, add about lots in subdivisions
- Under applicability – separate residential and commercial
- Add residential in front of infill so it applies to only residential development and redevelopment
- Under generally, add primary in front of structures

Duplex Draft Language

- Make lot plural

Definitions

- Will check with Town Attorney to see if it is necessary to define “adult” and if “rounding” is always rounding down
- Elevated floor – remove “elevated” from in front of word lower
- Cottage housing development – add total floor area and that it excludes covered unheated areas
- Open space – add “or improved with landscape improvements”
- Define commercial vehicle
- Conservation subdivision – add “and natural features and vegetation are preserved in the permanent open space that is provided”
- Yard – change “open space” to “unbuilt portion of a lot”
- Summer camp – change “shall be accredited” to “may be accredited”
- Check if there are different definitions for mobile home versus manufactured home

V. OLD BUSINESS

None.

VI. PUBLIC COMMENT

None.

VII. COMMUNICATION FROM PLANNING BOARD

Chas Fitzgerald asked if the Town can require that subdivisions that are partially outside of the Town limits to voluntarily annex that portion of the subdivision. Jennifer Tipton said that she will check with the Town Attorney and see if that is possible.

Planning Board Workshop
August 17, 2023

VIII. COMMUNICATION FROM STAFF

Jennifer Tipton said that the regular meeting for August will be for the conditional zoning request for Montreat College. Ms. Tipton said she hopes to have a full first draft of the UDO by September 1st.

VX. ADJOURNMENT

With no further business, the meeting was adjourned at 7:37 p.m.

Prepared by:

Chris Collins, Chair

Jennifer Tipton, Senior Admin

Montreat College – Black Mountain Campus
Conditional District Zoning Map Amendment Application
Submitted Aug. 1, 2023

Applicant: Montreat College

Property Information (Project Location): 191 Vance Ave. (PIN #: 060993948000000)

Parcel size: 89.19 acres

Existing Zoning District: Institutional Campus Development (ICD)

Proposed Zoning District: Institutional Campus Development Conditional Zoning (ICD-CZ)

Land Use (existing and proposed): Montreat College campus

Project Cost: +/- \$400 million

Site Information: per *Campus Master Plan Notes and Conditions*

Environmental information:

Is development occurring on slopes >36%? **No.**

Property located within a designated Water Supply Watershed Area? **No.**

Stream or river on property? **Yes.**

Property located within the Special Flood Hazard Area? **Yes.**

Base Flood Elevation? **Varies.**

Impervious Area:

Existing: +/- **7 acres.**

Proposed: **TBD.**

Note: the applicant submitted a survey dated Aug. 1, 2005.

Summary of Campus Master Plan Notes and Conditions

The guiding principles are:

1. Reinforce revenue sustainability
2. Protect and maintain facilities
3. Strengthen academic offerings
4. Enhance a vibrant student culture
5. Connection of the two campuses

The Master Plan exists in the context of an expectation that there will be changes in higher education, technology, transportation and needed employment skills over time. The plan binds the College to:

- A. Develop the Campus to contain only uses permitted in the Institutional Campus Development district.
- B. Develop the primary access as the new Blue Ridge Rd. entrance/exit and the secondary access as the secondary (existing) Vance Ave. entrance/exit.
- C. Comply with the State Building and State Fire Codes as they exist when the College seeks Town approval for construction of an improvement or facility.
- D. Comply with the Town's standards for stormwater, floodplain, public/private street/road configuration and design and parking space number/standards as these regulations exist on August 28, 2023, unless modified by the Master Plan or the Development Agreement as they are approved by the Town but with the option of proposing alternative designs within the Campus which satisfy the intent of these regulations.
- E. Establish a campus perimeter buffer. Additionally, the College commits to development of the Tomahawk Branch Loop Trail as a dawn-to-dusk public pedestrian and non-motorized bicycle-only trail.

Inside the campus perimeter buffer, the College maintains flexibility to locate/relocate uses, buildings, and improvements to achieve and maintain the guiding principles of the College's Master Plan.

Campus Perimeter Buffer

Buffer of 100 feet or screened by landscaping, natural vegetation, landscaped berm, topography, fence or wall, subject to existing conditions and structures, the layout of internal private streets, parking areas, the new baseball field and modifications approved by Town staff.

The following can be located within the buffer: dwellings, triplexes, quadraplexes, parks (without spectator seating), vehicular and pedestrian access approved by the Town, stormwater management approved by the Town, and signage approved by the Town.

General Provisions

A. Campus development shall be governed by the Development Agreement between the Town and College, this Master Plan and the Black Mountain Land Use Code as of the date the Master Plan was submitted to the Town for approval. All uses permitted generally or specially in ICD shall be generally permitted and allowed as a matter of right.

B. The Master Plan is illustrative and conceptual in nature and requires flexibility regarding:

- Environmental matters
- Site conditions
- Physical constraints and design parameters
- Changes in higher education, transportation, technology and evolving skill set demands

Therefore, the following shall be subject to change by the College (at the time the College submits construction plans to the Town):

- Scope, size, location and other depictions of improvements
- Exact location of roadways
- Boundary lines between land uses, phase lines and their subsequent location and size

The number designation of phases is for convenience; phases may be developed in any order.

Completion of one phase is not necessary for beginning development and construction of another phase.

Phases and phase lines may be adjusted by the College as needed.

C. The Campus is a planned, unified educational campus. Key goals:

- Overall design integrity
- Positive impact on neighboring areas with amelioration of possible adverse impacts
- Accordingly, side and rear yards, buffers, building height separation standards, and other similar development standards within the Campus will not be required between improvements and other elements on the Campus except to the extent required by State Building and Fire codes at the time of submittal by the College of its construction plans, and the Town's Land Use Code existing on August 28, 2023 including the Town's stormwater and floodplain regulations unless modified by the Master Plan or the Development Agreement as they are approved by the Town or the College agrees in writing to a development regulation in effect after August 28, 2023.

D. The College shall have the right to subdivide and/or recombine the lots within the Campus, and the lots shall be exempt from any internal separation or dimensional standards.

E. Primary access: from Blue Ridge Road, with contractors limited to use of this access. Secondary access: from Vance Avenue.

- F. The proposed private Campus street system and parking areas are conceptual and subject to change. Access point 9 from US Hwy 70 is optional. The primary private access street, if necessary, may be located within the Town-regulated stream buffer or stormwater management area. Generally, campus private streets will be paved at a minimum width of 20 feet.
- G. Development of the Campus will be subject to stormwater management requirements as set forth in the Town's Land Use Code as of August 28, 2023 unless modified by the Master Plan or the Development Agreement as they are approved by the Town or the College agrees in writing to a development regulation in effect after August 28, 2023.
- H. The location, size and type of stormwater management systems are subject to review and approval per Section 2.1.4 of the Land Use Code. Adjustments may be necessary to accommodate actual stormwater treatment requirements, natural site discharge points and private streets of the Campus.
- I. Streams, wetlands, open spaces and trails and regional greenways are provided on the Master Plan based on preliminary information available to the College when it submitted the Master Plan to the Town. The actual location of streams, wetlands, the Tomahawk Branch Loop Trail, the existing pedestrian and non-motorized bicycle greenway and other open spaces will be shown on College permit applications.
- J. Buildings, parking, driveways and outdoor activities should be arranged to emphasize the more aesthetically pleasing components of the Campus and disguise less attractive elements.
- K. The Campus is meant to function as a development that integrates live, learn, work and play aspects. The college shall have the right to submit actual parking studies on its campuses or nationally recognized parking studies and request Town staff to approve parking ratios different than provided in the Town's Land Use Code in effect on Aug. 28, 2023.
- L. The Town and College are committed to a collaborative review process, focused on enduring and sustainable development and quality design. Alternative site and design elements may be approved on a case-by-case basis.

Greens, Plaza & Open Space

Passive and active open space areas will be provided throughout the Campus, consisting of parks, pedestrian and bike trails, regional trails, amenitized stormwater facilities (internal or external to the facility), existing streams and buffer yards, landscape areas, greens, plazas, sidewalk areas where seating is available, greenhouses, orchards, community gardens, tree save areas, and similar areas, including without limitation the existing pedestrian and non-motorized bicycle greenway along the southern border of the Campus and the new Tomahawk Branch Loop Trail.

Public/Private Streetscapes

Principal buildings should be placed to present a front or side façade to all streets, and shall face upon the street with an entrance and have architectural features such as windows, banding and medallions. The goal is to avoid sterile, unarticulated and blank treatments. Waste containers shall be in the rear or side, and screened.

Buildings and site elements are to promote pedestrian scale, an enhanced streetscape realm and promote walkability. No building shall exceed four stories (60 feet) in height, measured from the ground at the building's main entrance to the ceiling of the highest occupied floor.

Signage

Signage as allowed in the Town's Land Use Code in effect on Aug. 28, 2023, may be provided.

Lighting

Semi cut-off or full cut-off type lighting fixtures shall be used.

Primary Access to/from Campus

The primary access road should be enhanced with ornamental landscaping, low-level decorative walls, monument-type signs and decorative paving.

Development and Use of the 2-acre Parcel (*in the far northwest corner of the master plan area*)

May be developed and used for any use which is accessory to the College or the uses permitted in ICD; for example, a welcome center. The use shall not be required to exclude members of the general public.

Variation from ICD Standards/Amendment of the Plan Notes

The Master Plan Notes and Conditions are intended to allow design, review and approval of development on the Campus which may vary from ICD standards. See, Town Code § 1.5.5.B.5. Changes to the Plan Notes shall be deemed minor modifications and approved by the Town Planning Director administratively.

Conditional Zoning

Section 4.6.2 of the Land Use Code states in part that “conditional zoning districts are established to provide flexibility in the development of property while ensuring that proposed development is compatible with neighboring uses.” There are five general requirements:

1. No property shall be zoned as a conditional district except upon application of the owner.
2. A conditional district shall consist of land that will be planned and developed as a single development or as an approved series of development phases. The owner of the property shall be legally capable of ensuring that development of the property will comply with all documents, plans, standards, and conditions approved by the town.
3. All standards and requirements of the corresponding general use zoning district shall be met, except to the extent that the conditions imposed by the conditional zoning may be more or less restrictive than the development standards.
4. Only those uses permitted in the underlying zoning district, whether by right or specially, shall be permitted in the conditional zoning district. Uses not otherwise permitted within the underlying zoning district shall not be permitted within the conditional district.
5. No variance or special use permit may be issued for developments on property subject to a conditional zoning ordinance.

This Conditional District Zoning Map Amendment application generally conforms to the five requirements. It should be noted that the approach to parking and – in the context of the primary private access street - stream buffer and stormwater management appear to be outside of normal standards and requirements (see item 3):

1. Montreat College is the owner and submitted an application on Aug. 1, 2023.
2. As stated in one of the Master Plan's general provisions, “the Campus is a planned, unified educational campus.” As noted on the applicant's application, both the existing and proposed land use is “Montreat College Campus;” the applicant has demonstrated capacity to develop and renovate Campus property in conformity with Town zoning and code requirements.
3. The standards and requirements of ICD appear to be met, but two items would require closer analysis given the requirement for “all standards and requirements” to be met:
 - a. Parking: Item *I* in Subsection 4.7.12.3 (General Requirements) specifies a parking floor (“minimum required parking”) and ceiling (“maximum required parking”). Instead of detailing

an approach to parking that aligns with item **I**, the applicant calls for the College to submit actual parking studies and request Town staff to approve parking ratios different than provided by the Land Use Code (General Provision **K**).

- b. Stream Buffer and Stormwater Management: The applicant states that “the primary private access street, if necessary, may be located within the Town-regulated stream buffer or stormwater management area.” (General Provision **F**).
 - i. Section 20-385 (Exceptions) of Article IX (Stream Buffer Protections Standards) states that “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.” A lack of other feasible access to the property and/or street design that minimizes intrusion would have to be ensured.
 - ii. Section 3 (Standards) of Section 8.2 (The Phase II Stormwater Ordinance) does not refer to streets and driveways being permissible in Stormwater Control Measures. The requirements and design flexibility of the stormwater ordinance would have to be analyzed.
4. The Master Plan, including the “Notes and Conditions,” align with ICD’s permitted uses:
 - Academic Institutions
 - Assembly Facilities
 - Classrooms
 - Government Facilities (Black Mtn Municipal Well)
 - Parks (Tomahawk Branch Trail; Regional Multi-Modal Greenway)
 - Residential (Residence Halls)

 - Campus Services (Food Service/Dining Hall)
 - Gym (Field House/Wellness Center)
 - Recreational Facilities
 - Stadiums
5. The applicant does not state a desire for a variance or special use permit.

Other items of note regarding this Conditional District Zoning Map Amendment application:

Phases

General Provision **B** states that “phases may be developed in any order,” “completion of one phase is not necessary for beginning development and construction of another phase” and “phases and phase lines may be adjusted by the College as needed.” Given that facility and building construction, creation of pedestrian, bicycle and parking facilities, installation of Stormwater Control Measures to handle various phases of development, and other aspects inherent to phased build-out, this aspect of the application might warrant additional detail.

Other Flood and Water Criteria

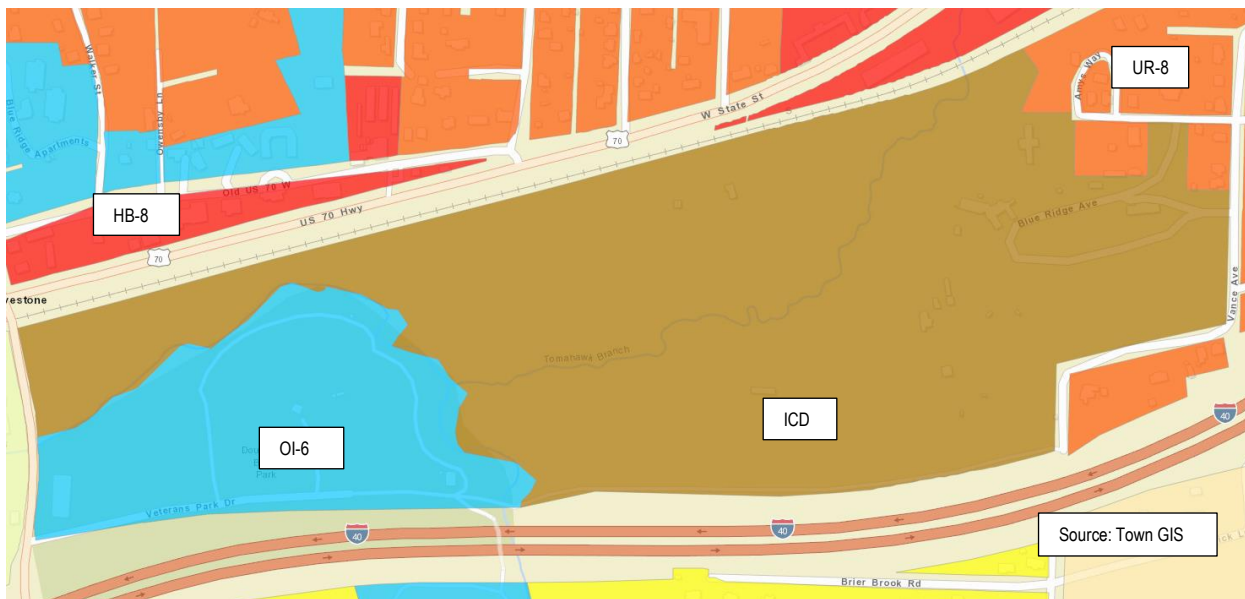
The General Provisions section appropriately references “the Town’s stormwater and floodplain regulations” but does not specifically call out the likely need for submission to the Town of a Floodplain Development Permit; the existence of floodway and floodplain criteria; or, Army Corps 404 permits and Division of Water Resources 401 permits that might need to be acquired by the applicant and presented to the Town.

Street Width

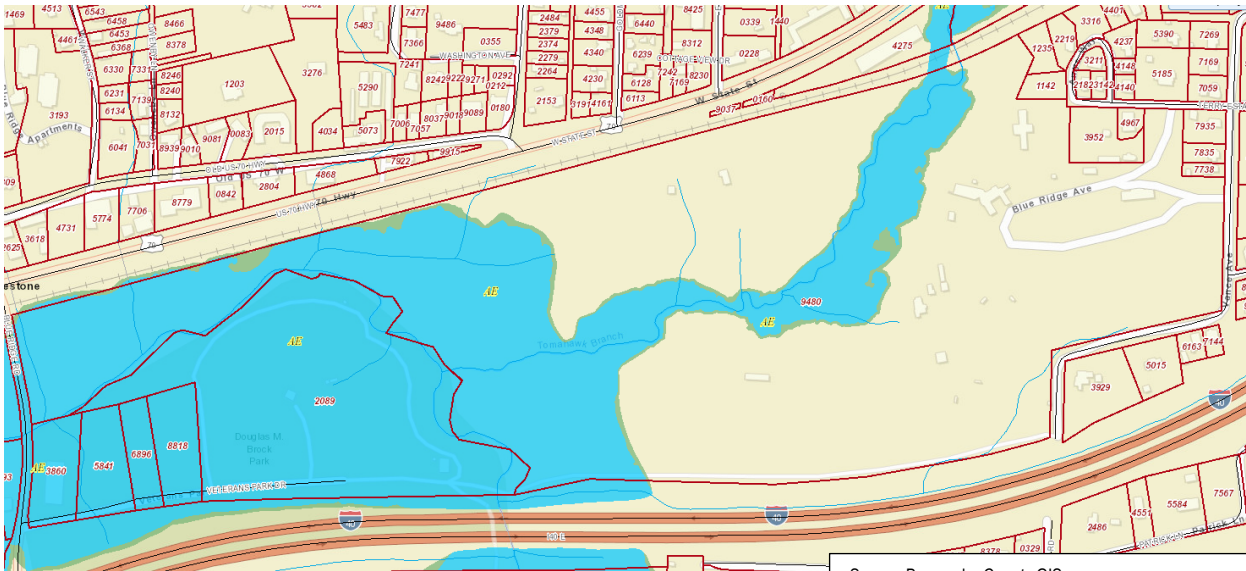
The only reference to street width is in General Provision F, which states that “generally, campus private streets will be paved at a minimum width of 20 feet.” Fire Department staff previously have noted to the applicant the

anticipated need for streets of 26 feet width. While the applicant's language does state a minimum of 20 feet, the anticipated need for 26 feet should somehow be referenced.

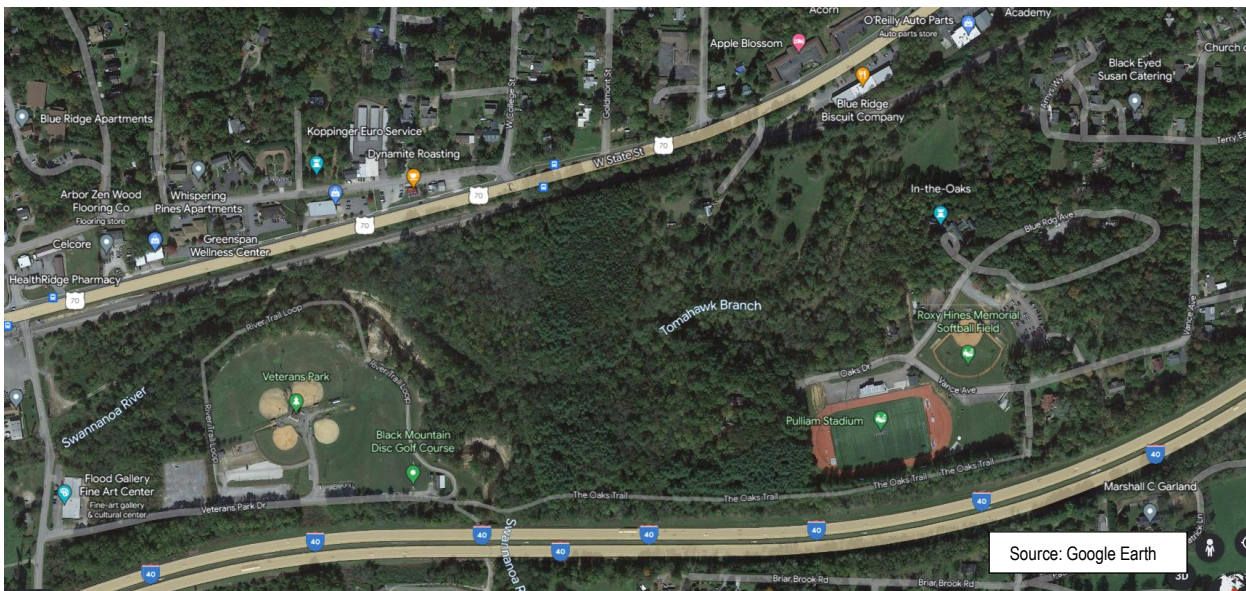
Zoning Map



Floodplain and Floodway



Ariel View



CONDITIONAL DISTRICT ZONING MAP AMENDMENT APPLICATION

www.townofblackmountain.org

REQUIRED TO BE SUBMITTED AT TIME OF APPLICATION (check all that apply)

Note: A pre-application meeting is required prior to application submittal.

Failure to provide the information required on this application may delay the review and scheduling of the required hearing.

- ☒ Digital copies of all paper submittal documents (may be emailed to Jennifer.tipton@tobm.org)
- ☒ 7 paper copies of complete site plans meeting the requirements of Town of Black Mountain Land Use Code (max. size 30" x 42")
- ☒ Deed(s) of all property to be included in the request
- ☒ Both a digital and a hard copy of a written metes and bound legal description with accompanying survey map for a request that would rezone only a portion of a tax parcel or requests for multiple zoning districts
- ☒ Property Owner Authorization. If you are not the property owner, you will need to provide documentation of property owner authorization to apply for this permit.
- ☒ Permit Fee

PROPERTY INFORMATION (Project Location)

Street Address: 191 Vance Ave. PIN #: 060993948000000

PROPERTY OWNER INFORMATION

Name: Montreat College

Mailing Address: Po Box 1267 Montreat, NC 28757

Phone #: 828-669-8012 Email: john.beaghan@montreat.edu

APPLICANT INFORMATION

Name: Montreat College Company: _____

Mailing Address: Po Box 1267 Montreat, NC 28757

Phone #: 828-669-8012 Email: john.beaghan@montreat.edu

DETAILED DESCRIPTION OF PROJECT

Montreat College masterplan for the entire tract (+/- 89
acres) and attached Masterplan Notes & Conditions

PROJECT COST:

\$: +/- \$400 million

DEVELOPMENT INFORMATION

Is the development subject to a previous Special Use Permit? ☐ Yes ☒ No

If yes, please describe: _____

Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711
828-419-9300, option 5

CONDITIONAL DISTRICT ZONING MAP AMENDMENT APPLICATION

www.townofblackmountain.org

Are there any other variances granted that impact the property? ☐ Yes ☒ No

If yes, please describe: _____

Are there any other variances requested with this development? ☐ Yes ☒ No

If yes, please describe: _____

DISTRICT/USE INFORMATION

Existing Zoning District: ICD Proposed Zoning District: ICD-CZ

Existing Land Use(s):

Montreat College Campus

Proposed Land Use(s):

Montreat College Campus

SITE INFORMATION (include information for additional buildings on a separate sheet)

Building Footprint Square Footage: Current: _____ Proposed: TBD

Total Building Square Footage (all floors): Current: _____ Proposed: TBD

Number of Stories: Current: _____ Proposed: TBD

Building Height: Current: _____ Proposed: TBD

Number of Units: Current: _____ Proposed: TBD

Number of Bedrooms: Current: _____ Proposed: TBD

See Masterplan Notes & Conditions

ENVIRONMENTAL INFORMATION

Total Land Area: +/- 89 Acres ☐ Sq. Feet or ☐ Acres

Disturbed Area: TBD ☐ Sq. Feet or ☐ Acres

Slope:

Is development occurring on slopes in excess of 36%? ☐ Yes ☒ No

If yes, what is the slope percentage: _____

Watershed:

Is the property located within a designated Water Supply Watershed Area? ☐ Yes ☒ No

Stream/River:

Is there a stream or river on or near the property? ☒ Yes ☐ No

SFHA:

Is the property located within the Special Flood Hazard Area? ☒ Yes ☐ No

Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711
828-419-9300, option 5

CONDITIONAL DISTRICT ZONING MAP AMENDMENT APPLICATION

www.townofblackmountain.org

If yes, what is the flood zone and base flood elevation: Varies

Impervious Area:

What is the existing impervious area in the development? +/- 7 ☐ Sq. Feet or ☒ Acres

What is the proposed impervious area in the development? TBD ☐ Sq. Feet or ☐ Acres

DESIGN PROFESSIONAL INFORMATION

Designer is an: ☐ Architect ☒ Engineer ☐ Owner ☐ Other: _____

Name: Jesse Gardner, P.E. Company: Civil Design Concepts, PA

Mailing Address: 168 Patton Ave Asheville, NC 28801

Phone #: 828-252-5388 Email: jgardner@cdcgo.com

Additional Designer Information: If additional designers are involved beyond the one listed, please provide additional information on a separate sheet.

BROWNFIELDS AGREEMENT NOTIFICATION

1. Does the applicant have or is the applicant planning to enter into a Brownfield Agreement with the NC Brownfields Program? ☐ Yes ☒ No
If yes, please answer question #2 below

2. Anticipated date for the first year of partial exclusion of property taxes: _____

APPLICANT SIGNATURE AND PROPERTY OWNER AUTHORIZATION

I hereby certify that I am authorized to submit this application; that all information is correct and complete; and all work will comply with all applicable state and local laws, ordinances, and regulations. I will ensure that the Planning and Development Department is notified of any changes in the approved plans and specifications for the project permitted herein.

Montreat College

Applicant (Print)



Applicant (Signature)

2/31/23

Date

Montreat College

Property Owner (Print)



Property Owner (Signature)

2/31/23

Date

OFFICAL USE ONLY

Permit Name: _____

Permit #: _____ Date: _____ Fee: _____ ☐ check ☐ CC

Tech Review Meeting Date: _____

Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711
828-419-9300, option 5

CONDITIONAL DISTRICT ZONING MAP AMENDMENT APPLICATION

www.townofblackmountain.org

Planning Board Meeting Date: _____
Town Council Meeting Date: _____
Date of Mailed Notification: _____
Date of Property Posting: _____
Request Approved: ☐ Yes ☐ No

Town of Black Mountain
160 Midland Avenue
Black Mountain, NC 28711
828-419-9300, option 5

MONTREAT COLLEGE

Campus Master Plan Notes and Conditions

Background/Impetus

To assist the College's nationally recognized cybersecurity training program, the North Carolina General Assembly appropriated \$30 million for the design and construction of a Cyber Security Facility on the College's campus. As a consequence of the General Assembly's appropriation, the College engaged in an extensive master planning process to provide guidance as to where on its Black Mountain Campus ("Campus") the Cybersecurity Facility would be best located, along with guidance to establish and maintain overall design integrity on the Campus while maximizing positive impacts on neighboring areas and minimizing possible adverse impacts.

Master Plan Notes and Conditions

This Master Plan depicts uses and improvements envisioned by the College at the Black Mountain Campus arising from the College's master planning process which included an extensive review of its Montreat Campus, its Black Mountain Campus, both the advantages and opportunities of each campus as well as their specific constraints.

The guiding principles of the College's Master Plan are to **(1)** reinforce revenue sustainability, **(2)** protect and maintain facilities, **(3)** strengthen academic offerings, **(4)** enhance a vibrant student culture and **(5)** connection of the two campuses. It is foreseeable during the development of the Black Mountain Campus that many changes in higher education, technology, transportation, and skills needed for the 21st century will occur. This Master Plan binds the College to **(A)** develop the Campus to contain only uses permitted in the Institutional Campus Development district, **(B)** develop and maintain the principal and secondary access to and from the Campus as depicted on the Master Plan, **(C)** comply with the State Building and State Fire Codes as they exist when the College seeks Town of Black Mountain ("Town") approval for construction of an improvement or facility, **(D)** comply with the Town's standards for stormwater, floodplain, public/private street/road configuration and design and parking space number/standards as these regulations exist on August 28, 2023, unless modified by the Master Plan or the Development Agreement as they are approved by the Town but with the option of proposing alternative designs within the Campus which satisfy the intent of these regulations and **(E)** establish a perimeter buffer around the Campus as described below. Additionally, the College commits to development of the Tomahawk Branch Loop Trail as a dawn to dusk public pedestrian and non-motorized bicycle only trail on the Campus with appropriate security to protect the Campus such as gates and similar protective features. Inside the Campus' perimeter buffer, the College maintains flexibility to locate/relocate uses, buildings, and improvements to achieve and maintain the guiding principles of the College's Master Plan.

The following Plan Notes provide more detailed statements and commitments.

Campus Perimeter Buffer

Subject to existing conditions and structures and the layout of internal private streets, parking areas and new baseball field shown on the Master Plan and modifications approved by Town staff, where the Campus adjoins existing residential development, a buffer shall be 100 feet or screened by landscaping, natural vegetation, landscaped berm, topography, fence or wall except single family dwellings with or without accessory apartments, duplexes, triplexes, quadraplexes, parks (without spectator seating), automotive and pedestrian access approved by the Town, stormwater management approved by the Town and signage approved by the Town may be located within the buffer.

General Provisions

A. The development on the Campus shall be governed by the Development Agreement between the Town and College, this Master Plan, and the Black Mountain Land Use Code as of the date the Master Plan was submitted to the Town for approval, August 28, 2023 unless modified by the Master Plan or the Development Agreement as they are approved by the Town or the College agrees in writing to a development regulation in effect after August 28, 2023. All uses permitted generally or specially in the Town's Institutional Campus Development District shall be generally permitted and allowed on the Campus as a matter of right.

B. This Master Plan is illustrative and conceptual in nature and requires flexibility to accommodate, among other matters, environmental matters, site conditions, physical constraints and design parameters, and changes in higher education, transportation, technology, and evolving changes in the skill sets needed for the 21st century. As such, the scope, size, location, and other depictions of improvements, the exact location of roadways and boundary lines between land uses, phase lines and their subsequent location and size, shall be subject to change by the College at the time the College submits construction plans to the Town for its review and approval under section 2.1.4 of the Town's Land Use Code. The number designation of phases is for convenience. Phases may be developed in any order and completion of one phase is not necessary for beginning development and construction in another phase. Phases and phase lines may be adjusted by the College as needed.

C. The Campus is a planned, unified educational campus. The elements depicted on the Master Plan shall be viewed with the goal of maintaining the overall design integrity of the Campus and its facilities and provide positive impacts of the Campus on neighboring areas while ameliorating possible adverse impacts. Accordingly, side and rear yards, buffers, building height separation standards, and other similar development standards within the Campus will not be required between improvements and other elements on the Campus except to the extent required by the State Building Code and the State Fire Code at the time of submittal by the College of its construction plans, and the Town's Land Use Code existing on August 28, 2023 including the Town's stormwater and floodplain regulations unless modified by the Master Plan or the Development Agreement as they are approved by the Town or the College agrees in writing to a development regulation in effect after August 28, 2023.

D. The College shall have the right to subdivide and/or recombine lots within the Campus and the lots shall be exempt from any internal separation or dimensional standards.

E. As shown on the Master Plan, the primary access to the Campus will be from Blue Ridge Road. The College will provide in its construction contracts that contractors will only use the primary access private street from Blue Ridge Road for access to the Campus. The secondary access points shown on the Master Plan will be limited to secondary access in connection with occasional special events, College shuttles, and emergency fire and police access. All secondary access points will either be gated, have knock down barricades, or restrictive signage and may have other similar devices approved by the Town.

F. The proposed private Campus street system and parking areas shown on the Master Plan are conceptual and the exact location and configuration of any private Campus street, or similar right of way within the Campus is subject to change based on, among other things, future environmental concerns, site conditions, physical constraints, design parameters, ultimate land uses and improvements and changes in transportation practices. Access point 9 from U.S. Highway 70, as shown on the Master Plan, is optional. In order to achieve the benefit of locating the primary access to the Campus as being from Blue Ridge Road, the Master Plan shows the primary private access street along the narrow western neck of the Campus where there is minimal separation between the existing active railroad corridor and the Swannanoa River. If necessary, the private access street may be located within Town regulated stream buffer or stormwater management area. Generally, Campus private streets will be paved at a minimum width of twenty (20) feet.

G. The Campus is located within the Swannanoa River basin with Tomahawk Branch generally bisecting the Campus and the Swannanoa River being a portion of the Campus' southwest border. Development of the Campus will be subject to stormwater management requirements as set forth in the Town's Land Use Code as of August 28, 2023 unless modified by the Master Plan or the Development Agreement as they are approved by the Town or the College agrees in writing to a development regulation in effect after August 28, 2023.

H. The location, size, and type of stormwater management systems depicted on the Master Plan are subject to review and approval as part of review of applications for permits as provided by section 2.1.4 of the Land Use Code. Adjustments may be necessary to accommodate actual stormwater treatment requirements, natural site discharge points and private streets of the Campus.

I. Streams, wetlands, open spaces and trails and regional greenways are provided on the Master Plan based on preliminary information available to the College when it submitted the Master Plan to the Town. The actual location of streams, wetlands, the Tomahawk Branch Loop Trail, the existing pedestrian and non-motorized bicycle greenway and other open spaces will be shown on applications prepared by the College for permits issued pursuant to section 2.1.4. of the Town's Land Use Code as it existed on August 28, 2023 unless modified by the Master Plan or the Development Agreement as they are approved by the Town, or the College agrees in writing to a development regulation in effect after August 28, 2023.

J. Site elements of the Campus such as, without limitation, buildings, parking, driveways, and outdoor activities should be arranged to emphasize the more aesthetically pleasing components of the Campus (e.g., landscaping and architectural features) and disguise less attractive elements (e.g., service facilities, outdoor storage, equipment areas, and refuse enclosures) through proper placement and design of buildings, and landscaping.

K. The Master Plan includes uses, buildings and other improvements intended for students to live on the Black Mountain Campus. Uses, buildings and other improvements on the Campus will be located and arranged to ensure that the Campus functions as a live, learn, work, and play integrated development for students, faculty and staff and designed for religious, art and cultural events and college sports. Recognizing that parking ratios are everchanging and evolving, the College shall have the right to submit actual parking studies on its campuses or nationally recognized parking studies and request Town staff to review and approve parking ratios different than provided by the Town's Land Use Code in effect on August 28, 2023, as an alternative design.

L. The Town and the College recognize that each component of the Campus must be considered individually; and are committed to a collaborative review process that has the shared objective among project proponents, project reviewers, and other interested parties of ensuring enduring and sustainable development and promoting quality design. Flexibility in considering alternative approaches to good design allows the Town and the College to encourage design creativity and avoid possible undue hardships in particular situations. Considering this commitment, alternative site and design elements for the Campus may be reviewed and approved on a case-by-case basis by staff approval of applications pursuant to section 2.1.4 of the Town's Land Use Code in effect on August 28, 2023, unless modified by the Master Plan or the Development Agreement as they are approved by the Town or the College agrees in writing to a development regulation in effect after August 28, 2023.

Greens, Plazas & Open Space

A series of passive and active open space areas will be provided throughout the Campus. The exact location and configuration of these open space areas may vary from what is illustrated on the Master Plan and final locations and configuration of the open space areas will be determined/finalized during approval of plans pursuant to section 2.1.4 of the Town's Land Use Code unless modified by the Master Plan or the Development Agreement as they are approved by the Town, or the College agrees in writing to a development regulation in effect after August 28, 2023. Open space may include passive and active features such as parks, pedestrian and bike trails, regional trails, amenitized stormwater facilities (internal or external to the facility), existing streams and buffer yards, landscape areas, greens, plazas, sidewalk areas where seating is available, greenhouses, orchards, community gardens, tree save areas, and similar areas, including without limitation the existing pedestrian and non-motorized bicycle greenway along the southern border of the Campus and the new Tomahawk Branch Loop Trail. Open space for the overall Campus is cumulative and will be calculated by the College and provided to the Town for each permit application submitted to the Town for review and approval.

Public/Private Streetscapes

Principal buildings should be placed to present a front or side facade to all public and private streets when feasible. All buildings adjacent to public or private streets shall face upon the street with an entrance and have architectural features such as but not limited to windows, banding, medallions, or design features or materials will be provided to avoid a sterile, unarticulated blank treatment of such walls. Solid waste containers shall be located to the rear or side of such buildings and appropriately screened from streets.

Building and other site elements will be located and arranged to promote pedestrian scale, enhance the streetscape realm, and provide walkability within the Campus for students, faculty, and staff. To this end, no building on the Campus shall exceed four (4) stories (sixty (60) feet in height measured from the ground at the building's main entrance to the ceiling of the highest occupied floor.)

Signage

Signage as allowed by the Town's Land Use Code in effect on August 28, 2023, may be provided unless modified by the Master Plan or the Development Agreement as they are approved by the Town or College agrees in writing to a development regulation in effect after August 28, 2023.

Lighting

All exterior wall and pole lighting in vehicular and loading areas will be semi cut-off or full cut-off type lighting fixtures pedestrian-scale, lower, decorative lighting and should be installed along sidewalks and at building entryways.

Primary Access to/from Campus

The primary vehicular access from Blue Ridge Road should be enhanced with elements such as ornamental landscaping, low-level decorative walls, monument-type signs, and decorative paving to emphasize site access locations.

Development and Use of the 2-Acre Parcel

The 2-acre parcel at the northwestern corner of the Campus adjacent to Blue Ridge Road and existing Light Industrial uses may be developed and used for any use which is accessory (incidental and subordinate) to the College, or the uses permitted in the Institutional Campus District. By way of illustration (and not limitation) this parcel may be developed and be used as a welcome center or other facility for the benefit of the College and convenient for students, parents of students, faculty, and other College employees. The use will be accessory and subordinate to the College or the Campus when it furthers the College's mission or enhances the live, work, learn, play function of the Campus. The use shall not be required to exclude members of the general public.

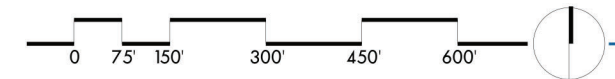
Variation from ICD Standards/Amendment of the Plan Notes

The Master Plan Notes and Conditions are intended to allow design, review and approval of development on the Campus which may vary from ICD standards. *See*, Town Code § 1.5.5.B.5. Changes to the Plan Notes shall be deemed minor modifications and approved by the Town Planning Director administratively.

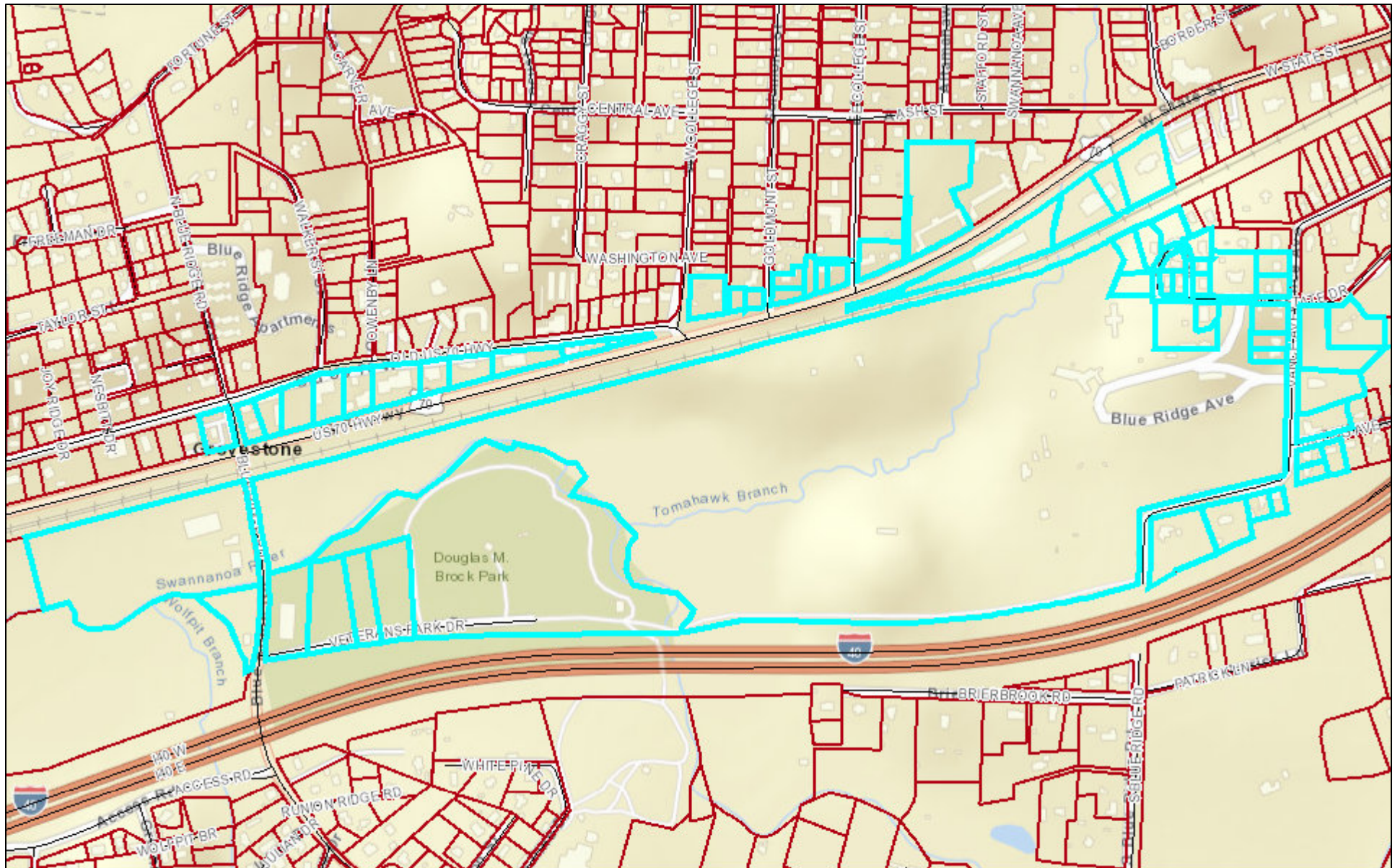
LEGEND

- EXISTING BUILDING
- NEW BUILDINGS/BUILDING ADDITION
- PRIMARY VEHICULAR STREET
- PRIMARY PEDESTRIAN WALKWAY
- TRAIL/GREENWAY
- MONTREAT COLLEGE PROPERTY LINE
- EXISTING TREES
- PROPOSED TREES

1. ACADEMIC BUILDING
2. RESIDENCE HALL (4 STORIES, 160 BEDS EACH BUILDING)
3. FIELD HOUSE / WELLNESS CENTER
4. FOOD SERVICE / DINING HALL
5. EXISTING ABBOTT HALL
6. EXISTING MANOR HOUSE
8. PRIMARY CAMPUS ENTRANCE/EXIT
9. EXISTING SECONDARY ENTRANCE/EXIT
10. TENNIS COURTS
11. EXISTING ADMINISTRATION BUILDING
12. HALF SIZE PRACTICE SPORTS FIELD
13. PARKING: 1,080 TOTAL SPACES
14. EXISTING HIGH ROPES COURSE & RELOCATION OF CLIMBING WALL
15. EXISTING PULLIAM STADIUM WITH NEW BLEACHERS
16. NEW SOFTBALL FIELDS
17. SWANNANOVA RIVER
18. STORMWATER MANAGEMENT
19. CULVERT OVER TOMAHAWK BRANCH CREEK
20. FUTURE NCDOT INTERSTATE INTERCHANGE
21. TOMAHAWK BRANCH LOOP TRAIL
22. EXISTING TOWN OF BLACK MOUNTAIN MUNICIPAL WELL (EASEMENT)
23. EXISTING PEDESTRIAN WALKWAY & NON-MOTORIZED BICYCLE PATHWAY (EASEMENT)
24. RESTORED MANOR HOUSE GARDEN
25. 2-ACRE PARCEL FOR FUTURE DEVELOPMENT
26. TOWN OF BLACK MOUNTAIN VETERAN'S PARK



CZ-01-23 Montreat College Buffer Map



August 4, 2023

1:9,028

0 0.075 0.15 0.3 mi

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

PIN #	OWNER	ADDRESS	CITY	STATE	ZIP CODE
'060963702700000'	BLACK MOUNTAIN CENTER FOR RESEARCH AND TECHNOLOGY LLC	PO BOX 418	BLACK MTN	NC	28711
'060972089300000'	JOEL CHRISTOPHER CARTER (ETAL)	2377 N FORK RIGHT FORK RD	BLACK MTN	NC	28711
'060972386000000'	WEI HONGQIN	822 N HAZARD AVE APT 305N	LOS ANGELES	CA	90063
'060972584100000'	ZHANG XIYUN	971 LAUREL COVE WAY	SNELLVILLE	GA	30078
'060972689600000'	TOWN OF BLACK MOUNTAIN	160 MIDLAND AVE	BLACK MTN	NC	28711
'060972881800000'	TOWN OF BLACK MOUNTAIN	160 MIDLAND AVE	BLACK MTN	NC	28711
'060973067100000'	HOME FREE LLC	35 HILLVIEW RD	ASHEVILLE	NC	28805
'060973262500000'	HANTUCKER, LLC	8187 CAMELOT DR	HARRISBURG	NC	28075
'060973361800000'	HANTUCKER, LLC	8187 CAMELOT DR	HARRISBURG	NC	28075
'060973473100000'	PUBLIC SERVICE COMPANY OF NC	PO BOX 1398	GASTONIA	NC	28053
'060973577400000'	AMERICAN EAGLE INVESTMENTS, LLC	PO BOX 16648	ASHEVILLE	NC	28816
'060973770600000'	BROWNING ANNA	1163 OLD US HWY 70 W	BLACK MTN	NC	28711
'060973877900000'	EKBM OFFICE BUILDING LLC	422 S MAIN ST	HENDERSONVILLE	NC	28792
'060983084200000'	GREENSPAN KEVIN;GREENSPAN LISA	3174 US HIGHWAY 70 W	BLACK MTN	NC	28711

'060983208900000'	TOWN OF BLACK MOUNTAIN	160 MIDLAND AVE	BLACK MTN	NC	28711
'060983280400000'	E & M BLACK MOUNTAIN PROPERTIES LLC	3176 US HIGHWAY 70 W	BLACK MTN	NC	28711
'060983486800000'	BBB&T LLC	4308 W CAYUGA ST	TAMPA	FL	33614
'060983792200000'	SVBSC LLC	116 CHURCH ST	BLACK MTN	NC	28711
'060983991500000'	B ALLEN PROPERTIES LLC	654 DARK HOLLOW DR	TRAPHILL	NC	28685
'060993948000000'	MONTREAT COLLEGE	PO BOX 1267	MONTREAT	NC	28757
'060994215300000'	LUCIANA REVOCABLE LIVING TRUST	207 FOX ST	MORGANTON	NC	28655
'060994319100000'	NASSEF SHEILA KATHLEEN	6 GOLDMONT ST	BLACK MTN	NC	28711
'060994416100000'	DAAJ INVESTMENTS LLC	15 ALPINE WAY	SWANNANOA	NC	28778
'060994611300000'	POMEROY PROPERTIES LLC	920 NC 9 HWY	BLACK MTN	NC	28711
'060994612800000'	POMEROY PROPERTIES LLC	920 NC 9 HWY	BLACK MTN	NC	28711
'060994716900000'	THE MANAGEMENT GROUP LLC	34 GOLDMONT ST	BLACK MTN	NC	28711
'060994724200000'	THE MANAGEMENT GROUP LLC	34 GOLDMONT ST	BLACK MTN	NC	28711
'060994823000000'	WARDEN AMANDA	36 FALCON RIDGE RD	BLACK MTN	NC	28711
'060994903700000'	WHEELON PAUL DOUGLAS	30 JORDAN RD	SWANNANOA	NC	28778

'061904016000000'	WHEELON PAUL DOUGLAS	30 JORDAN RD	SWANNANOA	NC	28778
'061904022800000'	REED FAMILY IRREVOCABLE TRUST	100 E COLLEGE ST	BLACK MTN	NC	28711
'061904144000000'	REED FAMILY IRREVOCABLE TRUST	100 E COLLEGE ST	BLACK MTN	NC	28711
'061904259500000'	MISCHA LLC	602 W STATE ST	BLACK MTN	NC	28711
'061904427500000'	OTR LLC	1186 PATTON AVE	ASHEVILLE	NC	28806
'061904943700000'	SLUDER STEPHEN K	431 OLD COUNTY HOME RD	ASHEVILLE	NC	28806
'061912392900000'	CUNNINGHAM CLIFFORD E;CUNNINGHAM LEANNE	250 VANCE AVE	BLACK MTN	NC	28711
'061913395200000'	BLACKSTONE TODD J;BLACKSTONE LINDSAY M.	102 TERRY ESTATE DR	BLACK MTN	NC	28711
'061913496700000'	BLACKSTONE TODD J;BLACKSTONE LINDSAY M.	102 TERRY ESTATE DR	BLACK MTN	NC	28711
'061913501500000'	COOK HENRY FORD III;COOK CLAIRE TAYLOR	236 VANCE AVE	BLACK MTN	NC	28711
'061913616300000'	JUSTIN REES TEAGUE REVOCABLE TRUST;THERESE ANN VANO REVOCABLE TRUST	226 VANCE AVE	BLACK MTN	NC	28711
'061913714400000'	CLARA P KELLY (LE)	222 VANCE AVE	BLACK MTN	NC	28711
'061913773800000'	SMITH JUDY V	183 VANCE AVE	BLACK MTN	NC	28711
'061913783500000'	MAGNOLIA PROPERTIES BLACK MOUNTAIN LLC	103 DILLING AVE	BLACK MTN	NC	28711

'061913793500000'	ROBERTS (LE) LEAH DELORES HAYNES;ROBERTS (LE) CLYDE E.	70 SKY HIGH DR	BLACK MTN	NC	28711
'061913839400000'	HANDSMAN SAMUEL JR;HANDSMAN KATHLEEN E	212 VANCE AVE	BLACK MTN	NC	28711
'061913920700000'	CRAIG ROBIN B;CRAIG MARTHA H	216 VANCE AVE	BLACK MTN	NC	28711
'061913946900000'	HILL GERMAINE W;HILL DAVID	202 VANCE AVE	BLACK MTN	NC	28711
'061913969300000'	WILKERSON TAMELA STAFFORD;WILKERSON JOSEPH JOSHUA	190 VANCE AVE	BLACK MTN	NC	28711
'061914055700000'	KIWANIS CLUB BLACK MOUNTAIN SWANNANOA FOUNDATION INC	PO BOX 491	BLACK MTN	NC	28711
'061914114200000'	MCCORMICK FRED A II;MCCORMICK NATASHA A	27 AMYS WAY	BLACK MTN	NC	28711
'061914123500000'	MILLER KEVIN CHRISTIAN;MILLER KATIE ANN	105 FRONT PORCH DR	BLACK MTN	NC	28711
'061914218200000'	AMMONS DENISE CAROL	109 TERRY ESTATE DR	BLACK MTN	NC	28711
'061914221900000'	KAUFFMAN RACHEL L;KAUFFMAN SETH L	19 AMYS WAY	BLACK MTN	NC	28711
'061914260200000'	NORTH CAROLINA ACADEMY LLC	PO BOX 1236	BLACK MTN	NC	28711
'061914314200000'	SCHWEIG TRUST	51 BLUE SAGE	LITTLETON	CO	80127
'061914321100000'	BUSH DEVON PAIGE	12 TIVOLI DR	ASHEVILLE	NC	28806
'061914331600000'	MOORE SAMUEL M;MOORE JULIA L	13 AMYS WAY	BLACK MTN	NC	28711
'061914414000000'	HUE STEVE K;NIELSEN-HUE STARR	PO BOX 1201	BLACK MTN	NC	28711

'061914414800000'	ERWIN JASON L;ERWIN CYNTHIA L	5 AMYS WAY	BLACK MTN	NC	28711
'061914423700000'	ODOSKI IRENE A	7 AMYS WAY	BLACK MTN	NC	28711
'061914518500000'	BRASHER BRADLEY C;BRASHER CYNTHIA I	99 TERRY ESTATE DR	BLACK MTN	NC	28711
'061914705900000'	READY JON C;READY LAURA G	167 VANCE AVE	BLACK MTN	NC	28711
'061914716900000'	VEIL THEODORE;VEIL COREY RIMMER	161 VANCE AVE	BLACK MTN	NC	28711
'061923030300000'	MAGNOLIA PROPERTIES BLACK MOUNTAIN LLC	103 DILLING AVE	BLACK MTN	NC	28711
'061923075600000'	SPITZLEY STEPHEN C;SPITZLEY CONSTANCE H	78 TERRY ESTATE DR	BLACK MTN	NC	28711
'061923191100000'	SPITZLEY STEPHEN C;SPITZLEY CONSTANCE H	78 TERRY ESTATE DR	BLACK MTN	NC	28711



Town of Black Mountain

160 Midland Avenue ♦ Black Mountain, North Carolina, 28711
Phone: 828-419-9373 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-5962

NOTICE OF CONDITIONAL ZONING REQUEST (REGARDING NEIGHBORS WITHIN 200 FEET OF PROPERTY)

DATE: **August 11, 2023**

TO: **Property Owner**

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

APPLICANT NAME: **Montreat College**

PROPERTY ADDRESS: **191 Vance Avenue**

PIN #: **0609-93-9480.00000**

CURRENT ZONING CLASSIFICATION: **ICD (institutional campus development)**

REQUESTED ZONING CLASSIFICATION: **CZ-ICD**

CURRENT LAND USE: **college campus**

PROPOSED LAND USE: **college campus**

SIZE OF PARCEL: **89 acres**

DESCRIPTION OF PROJECT:

Develop remainder of college campus (academic building, residence hall, field house/wellness center, food service/dining hall, tennis courts, existing sports fields, new softball fields)

A public meeting of the Planning Board on this matter will be held Monday, August 28, 2023, @ 6:00 p.m. in the Council Chambers of Town Hall at 160 Midland Avenue.

This is your notification for this request specified under 1.5.4 of the Land Use Code for the Town of Black Mountain. Section 1.5.4 (G) and (I) indicate that notice be provided to all property owners within 200 feet of the site's property lines. Notice of the time, date and place of the hearing will be published in the Black Mountain News in accordance with the Land Use Code of the Town of Black Mountain.

Montreat College
Development Agreement (Black Mountain Campus)
Between the Town of Black Mountain and Montreat College

Submitted Aug. 1, 2023
(submitted with Conditional District Zoning Map Amendment application)

The Master Plan Notes and Conditions contained in the applicant's Conditional District Zoning Map Amendment application includes the following General Provision:

A. The development on the Campus shall be governed by the Development Agreement between the Town and College, this Master Plan, and the Black Mountain Land Use Code as of the date the Master Plan was submitted to the Town for approval, August 28, 2023 unless modified by the Master Plan or the Development Agreement as they are approved by the Town or the College agrees in writing to a development regulation in effect after August 28, 2023. All uses permitted generally or specially in the Town's Institutional Campus Development District shall be generally permitted and allowed on the Campus as a matter of right.

Section 1.10 (Development Agreements) of the Land Use Code explains that state statute permits a local government to enter into development agreements with developers for projects on property of any size, with the intent of allowing the Town "flexibility in managing large projects which may have a variety of uses and purposes included in a master plan, or which would otherwise not be appropriate for a traditional neighborhood development or other zoning district designation available at the time of the development plan approval." Development agreements provide assurances of vested rights indefinitely, unless the project is to occur over time or in phases in which case a timeframe is specified in the agreement. (Subsection 1.10.1).

Development proposals are to meet local, state and federal requirements addressing building code, fire code, ADA, stormwater and flood hazard prevention, among others. They are to "conform to all adopted town plans, policies, guidelines and manuals, including the comprehensive plan, pedestrian plan and Greenway Master Plan." A development agreement may specify land use intensities, heights, setbacks, floor area, lot sizes and widths, recreation space, parking requirements, impervious surface limitations and other dimensional standards. (Subsection 1.10.2)

Development agreements shall be accompanied by a master plan and the provisions of the development agreement as specifically enumerated and adopted and shall govern the development of the land in accordance with the master plan. (Subsection 1.10.3)

Notable provisions of the submitted Development Agreement:

Recitals

A major driver of the Campus Master Plan and the application for conditional zoning and submission of a development agreement is Montreat College's designation by the National Security Agency and the Department of Homeland Security as a National Center of Academic Excellence in Cyber Defense Education, an outgrowth of the college developing a major degree in cybersecurity. (page 3)

Elevate Black Mountain’s five “Community Vision” elements are highlighted. The five elements are Walkable & Livable, Green & Resilient, Vibrant Economy, Civic Engagement and Connected & Accessible. In addition, the designation of the campus location as “Institutional Campus” on the Future Land Use Map is noted. (page 3)

The College Board of Trustees adopted the Master Plan that’s included with both the conditional zoning application and the Development Agreement on January 27, 2023, after conducting 32 stakeholder engagement sessions. (page 4)

Consistency between *Elevate Black Mountain* and the Campus Master Plan is detailed. (pages 4-6)

An “integrated and joint schedule for development of the Campus and delivery of public water and sewer to the Campus” is detailed in **Exhibit C**. Among the notable provisions in Exhibit C are:

- The “buffer along residential development along the outer boundary of the Campus described in the Campus Master Plan” may not be modified “without the College seeking a minor amendment of the Master Plan.”
- Town water is available to the Campus at Blue Ridge Road, but “water lines should be extended through the Campus and looped back to the Town’s existing water line in Vance Avenue” as a benefit to both the College and system interconnectivity.
- The College and the Town agree to “cooperate, coordinate, and collaborate during development of the Campus to identify funding sources for these water system improvements and to plan, design, and construct them.”
- Noting that the “actual pace of development could be substantially quicker or slower” and that the Campus could possibly not be completely developed before the end of the term of the Development Agreement, the following development schedule is included:

<u>PHASES</u>	<u>ANTICIPATED START</u>	<u>PROJECTED COMPLETION</u>
Phase 1	Jan 2024	Jan 2029
Phase 2	Jan 2029	Jan 2034
Phase 3	Jan 2034	Jan 2039
Phase 4	Jan 2039	Jan 2044
Phase 5	Jan 2044	Jan 2049
Phase 6	Jan 2049	Jan 2054

Exhibit D states the duration of the agreement as **50 years**. Subsequent development agreements may extend the original duration period.

Terms and Conditions (excerpts)

Article 3.1: Campus Development Regulations: If the College changes the Campus Master Plan, the College will submit the revised Campus Master Plan as a revised Exhibit B of this Development Agreement to the Town for review and comment. Approval of the revised Campus Master Plan shall be deemed a minor amendment of the Development Agreement approvable by Town staff.

Article 3.2: Availability of the Town's Water Utility to Serve the Campus: The parties agree to plan together the Water Extension and the Town agrees to include the Water Extension as a project in its Capital Improvement Plan and to collaborate with the College as to planning and funding the Water System Extension.

Article 3.5: Reviewing of Applications and Issuing Development Approvals: The Town shall provide expedited review and approval of all applications and plans submitted by the College requesting Development Approvals for Development of the Campus, including without limitation, zoning, site plan, subdivision, water, site layout, subdivision, and grading and building plans, with an initial response delivered to Campus within no more than two (2) weeks of submittal of each request to the Town.

Article 3.7: Vested Rights to Complete the Campus; Application of Laws and Development Regulations: Except where a State or federal law is adopted after the Effective Date and the law mandates local government enforcement that has a fundamental or retroactive effect on Development or use of the Campus as provided in this Development Agreement or for one of the grounds set forth in the current (as of the Effective Date) version of N.C.G.S. § 160D-108.1(f)(1)(b)-(e), the Campus shall be subject only to the Laws and Development Regulations and policies enacted and applicable to the Campus at the time of the Town's approval of this Development Agreement by adoption of an ordinance (the "Campus Development Law").

Article 3.8: Town Services: The Campus shall enjoy "best nation status" under all rate schedules adopted by the Town from time to time. "Best nation status" means that the rate charged for water and other services provided by the Town service usage, including but not limited to public water, shall be no higher than the lowest usage rate charged by the Town to any utility customer located within or outside the Town's corporate limits.

The following is per the Town Attorney:

Chapter 160D of the North Carolina General Statutes authorizes the Town to form a development agreement. Section 160D-1004 provides that the agreement "... shall be of a reasonable term specified in the agreement." With the development of the proposed college site plan the college can bargain for a "reasonable" term of many years considering the scope of the proposal and the dependence on future financing. Section 160D-1006(b) provides that the Town may (not "must") provide that the development or phases of the development be commenced within a specified period of time, with a requirement that interim completion dates are set at intervals no greater than five years.

Section 160D-1006(e) implies that staff may approve minor modifications of the approved site plan set out in the agreement by stating that "Consideration of a proposed major modification... shall follow the same procedures as required for the initial approval..." That same section allows the definition of "major modification" can be established in the agreement and adopting ordinance.

Section 160D-1007(a) does provide that the laws in effect at the time of execution of the development agreement apply unless the agreement provides that the agreement is subject to subsequently enacted laws. All existing development regulations will apply, but there are health and safety laws that might affect the plan, and some matters, such as the extent of designated flood zones and the construction near and methods of crossing waterways are beyond the Town's control. The landscaping plan, including requirements for the number, types and location of trees, might survive changes in ordinances. Section 160D-108(c) provides that state and federal law may mandate changes to Town regulation and enforcement, and Section 160D-108.1(f) lists situations where the agreement can be amended, including the written consent of the affected landowner(s) along with several reasons that do not require the consent of the property owner(s).

Drafted by and Return to:
Womble Bond Dickinson (US) LLP (JCC)
555 Fayetteville Street, Suite 1100
Raleigh North Carolina 27601

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

**DEVELOPMENT AGREEMENT
(Black Mountain Campus)**

THIS DEVELOPMENT AGREEMENT (“Development Agreement”) is made this __ day of _____ by and between the **Town of Black Mountain**, a North Carolina municipality, its successors or assigns (“Town”), and **Montreat College**, a North Carolina non-profit corporation, its successors or assigns (“College”) (collectively Town and College are the “Parties” and individually each is a “Party”).

RECITALS:

The Beginnings: The Town and College

WHEREAS, in 1893, the North Carolina General Assembly established the Town and with spectacular views, quaint locally-owned shops and friendly atmosphere, the Town has attracted botanists, artists, hikers, travelers and residents for one-hundred and thirty (130) years; and

WHEREAS, a few miles north of the Town, in 1897, four years after the Town was established, a Congregationalist minister formed the Mountain Retreat Association, and in 1907, the Mountain Retreat Association purchased property which became Montreat, North Carolina (“Montreat”); and

WHEREAS, surrounded by the beauty and tranquility of this part of the Swannanoa Valley, the Mountain Retreat Association, proposed in 1913 that its grounds and facilities be used as a school and in 1916 the College was formed in Montreat with original enrollment of eight (8) students; and

WHEREAS, the College has operated in Montreat and is an independent Christ-centered, liberal arts institution with baccalaureate and master programs that accepts all academically qualified students no matter their background or religious convictions and educates them through intellectual inquiry, spiritual formation and preparation for calling and career; and

WHEREAS, from its beginning, the principal entrance and exit to and from the College's original campus (the "Montreat Campus") has been (and remains) by way of the Town, inextricably linking the Town and the College together; and

WHEREAS, the Town and the College have operated and planned their futures in close proximity, being mindful of each others needs and purposes, for more than a century; and

Establishment of the College's Black Mountain Campus and
the Town's Land Use Planning for the Black Mountain Campus

WHEREAS, the Montreat Campus is forty-three acres (43) and located in a narrow valley with steep slopes that practically and environmentally constrain the College's expansion; and

WHEREAS, planning for its expansion coupled with its desire to expand as close as practically possible to its roots at the Montreat Campus, the College acquired seventy-two (72) acres within the Town in 2001 and thereafter acquired additional land contiguous to the seventy-two (72) acres, having the intent that this assemblage of property would become its future Black Mountain Campus (the "Campus"); and

WHEREAS, the Campus is currently eighty-nine (89) acres located west of the Town's historic Downtown between U.S. Highway 70 and Interstate 40 and east of Blue Ridge Road; and

WHEREAS, the legal description of the Campus is stated on Exhibit A of this Development Agreement; and

WHEREAS, in 2010, the Town amended its *Land Use Code* (the "Code") and adopted the Institutional Campus Development Zoning District ("ICD"), and rezoned the Campus to ICD; and

WHEREAS, the Code sets forth that the "purpose and intent" of the ICD zoning district is to allow "for the continued and future use, expansion and new development of academic, religious, government, and similar types of uses" and "to maintain the overall design integrity of the campus or facility setting while minimizing any adverse impacts on the neighboring areas" Code, § 4.7.12.1; and

WHEREAS, in 2015, the College developed a major degree in cybersecurity and, in the same year, developed a multi-million dollar athletic complex serving nine (9) College athletic teams on the Campus; and

WHEREAS, in the fall of 2015, the College began hosting a cybersecurity conference and by 2022 the cybersecurity conference had 400 attendees, evidencing substantial interest in cybersecurity and demonstrating recognition by citizens of the need for cybersecurity in the 21st century to protect every firm's, corporation's, government's, and citizen's information from theft or misuse; and

WHEREAS, in the fall of 2017, the National Security Agency and Department of Homeland Security designated the College as a National Center of Academic Excellence in Cyber Defense Education and the College was the first institution of higher education located in Western North Carolina to earn this designation; and

WHEREAS, in 2019, the Town began its planning process to update its existing comprehensive plan to better guide its planning and development decisions, and in January 2020, the Town began its major community events to engage the community in the Town's comprehensive planning process; and

WHEREAS, the Covid pandemic temporarily interrupted the community engagement process and the engagement process resumed in earnest by September 2020; and

WHEREAS, the Town prepared *Elevate Black Mountain* (the "EBM") in 2020 as its new draft comprehensive plan and its Planning Board reviewed and unanimously recommended approval of the EBM in February 2021; and

WHEREAS, on June 14, 2021 the Town's Town Council held a public hearing to consider adoption of the EBM as the Town's comprehensive plan, closed its public hearing and unimously adopted the EBM as the Town's comprehensive plan; and

WHEREAS, the EBM sets forth five (5) elements of "The Community Vision" as (1) Walkable and Livable, (2) Green and Resilient, (3) Vibrant Economy, (4) Civil Engagement and (5) Connected Accessible; and each element is a separate chapter with specific guidance supported by goals and policies; and

WHEREAS, consistent with zoning the Campus ICD, the EBM designates the Campus' character area as Institutional Campus on its Future Land Use Map *EMB*, p. 21, identifying the urban form and function of Institutional Campus character area including the size and type of buildings and their relationship to streets, the surrounding street and block pattern, parking and access, as well as land uses or types of development *Id.*; and

WHEREAS, specific to the Institutional Campus character area, the EBM describes Institutional Campus as "areas [that] include the continued and future use, expansion and new development of academic, religious, government and similar types in a campus arrangement" and "[t]hese areas should generally maintain the overall design integrity of the campus or facility setting and include a variety of different uses that meet the daily and weekly needs of residents, visitors and workers." *EBM*, p. 27; and

WHEREAS, the EBM further guides that the intent of Institutional Campus is to protect and enhance green space, have low impact development stormwater and green building techniques and pedestrian and bicycle facilities *Id.*; and

WHEREAS, the EBM accomplishes these desired outcomes by recommending buildings in the Institutional Campus character area to have one to four (1-4) stories and unique to the Institutional Campus character area, setting it apart from all other character areas in the EBM, building setbacks, lot width and block lengths should be "varied." *Id.*; and

WHEREAS, the EBM further accomplishes the intent of the Institutional Campus area by guiding that surface parking should be to the side, rear and front, and low impact development stormwater principles should be used Id.; and

The College's Master Planning Process and the Master Plan for the Campus

WHEREAS, approximately a year after the Town adopted the EBM, the College began its master planning process for the entire College, including the Montreat Campus and the Campus; and

WHEREAS, the College conducted thirty-two (32) separate engagement sessions with a variety of stakeholders, including the Town, and based upon the information gathered in these sessions, organized holistically for both campuses five (5) themes that are the guiding principles of the College's master planning and these pillars are: **(1)** Reinforce Revenue Sustainability, **(2)** Protect and Maintain Facilities, **(3)** Strengthen Academic Offerings, **(4)** Enhance a Vibrant Student Culture and **(5)** Connecting the two Campuses; and

WHEREAS, as part of its master planning process, the College gathered data as to classroom utilization, analyzed this data, including benchmarking the College's data with utilization data from North Carolina and South Carolina public universities and community colleges, and based upon its analysis, the College developed several specific conclusions including that the College's Cybersecurity Center should be located on the Campus and when the Cybersecurity Center is operational, the College's current cybersecurity courses, programs and activities should be relocated to the Campus; and

WHEREAS, after gathering information as to the opportunities and constraints of both campuses including available water and sewer utilities and their capacities to serve each campus, the College initiated separate design charrettes for each campus and tested various design scenarios for each campus to develop separate standalone master plans for each campus while integrating infrastructure and design in each master plan to connect the campuses, consistent with guiding principle five (5) of the College's Master Plan – Connecting the Campuses; and

WHEREAS, as the culmination of these studies, on January 27, 2023, the College's Board of Trustees adopted its Master Plan for the Campus, a copy of which is attached as **Exhibit B** of this Development Agreement (the "Campus Master Plan"); and

The Relationship between the EBM and the Campus Master Plan

WHEREAS, the Campus Master Plan restricts uses to uses permitted in the ICD district and therefore the Campus Master Plan is consistent with the ICD zoning and with the EBM; and

WHEREAS, the Campus Master Plan illustrates that buildings will be one to four (1-4) stories in height and therefore the Campus Master Plan is consistent with the ICD and with the EBM; and

WHEREAS, the Campus Master Plan illustrates that building setbacks, lot widths, block lengths will be varied and therefore the Campus Master Plan is consistent with the ICD and with the EBM; and

WHEREAS, the Campus Master Plan illustrates relationships between buildings, uses and improvements that are walkable and livable within the Campus, with active and passive recreational areas while preserving the historic Manor House and therefore the Campus Master Plan is consistent with the ICD and with the EBM, including the EBM's primary guiding principle of Walkable & Livable and aids accomplishing, among other Town goals, EBM Goals 2.4 (Unique community character that celebrates the Town's history, provides gateways, enhances safety, and creates active and exciting places) and 2.6 (An active environment that supports physical activity and healthy living); and

WHEREAS, the Campus Master Plan recognizes that Tomahawk Branch bisects the Campus and the Swannanoa River is adjacent to the Campus along the majority of its western boundary and the Campus Master Plan sets aside substantial areas along these water features as open spaces which will preserve the natural beauty of the Campus and protect and enhance water quality; therefore, the Campus Master Plan is consistent with the ICD and the EBM, including the EBM's primary guiding principle of Green & Resilient and aids accomplishing, among other Town goals, EBM's Goals 3.2 (Conserve green spaces and green corridors that are integrated throughout the Town) and 3.3 (A sustainable and resilient watershed that uses natural approaches to address stormwater); and

WHEREAS, the Campus Master Plan proposes development of the first college campus within the Town and when the Campus is developed, the Campus will promote and enhance the Town's vibrant, innovative economy by (1) adding employment opportunities within the Town, reducing the need of Town citizens to travel for work elsewhere in the Swannanoa Valley and beyond, (2) increasing diversity of employment opportunities within the Town, and (3) adding skill sets and training driven by 21st century technology which is not currently within the Town; therefore, the Campus Master Plan is consistent with the EBM, including its primary guiding principle of Vibrant Economy; and

WHEREAS, while the Campus Master Plan development footprint is modest in size and walkable, the opportunities arising from the Town becoming the home of the Campus in the 21st century are substantial and distinguishes the Town from most towns and communities in North Carolina; and

WHEREAS, because college campuses tend to promote diversity in nearby local economies and draw citizens to nearby communities, and embed skill sets needed for the 21st century, the Campus Master Plan aiding, among other Town goals, EBM Goals 4.1 (A strong, diversified economy) and 4.2 (A competitive workforce); and

WHEREAS, colleges tend to promote innovation and grow arts and culture and the Campus will provide a catalyst which will amplify the Town's tradition of innovation through arts, culture and creativity, aiding accomplishing, among other Town goals, EBM Goal 4.4 (Innovation through arts, culture and creativity); and

WHEREAS, the Campus Master Plan dedicates a new Tomahawk Branch Loop Trail and the College as a Town corporate citizen will have a greater investment in the Town; therefore, the Campus Master Plan is consistent with the EBM, including its primary guiding principle of Civil Engagement aiding, among other Town goals and policies, Goal 5.2 (High quality parks and public

spaces), Policy 5.2.3 (Encourage...dedication of new public spaces in master-planned developments), Goal 5.3 (Excellent public services and facilities) and Policy 5.3.3 (Continue to coordinate with local and regional partners to plan for....transportation, environmental, educational and economic development opportunities); and

WHEREAS, the Campus Master Plan illustrates an overall design integrity of an integrated educational live, work, play community providing pedestrian and bicycle facilities and therefore the Campus Master Plan is consistent with the EBM including its primary guiding principle of Connected & Accessible, aiding, among other Town goals, Goals 6.1 (Multiple safe and realistic transportation mode options for residents) and 6.2 (Non-automotive transportation network); and

WHEREAS, the Campus Master Plan establishes the primary campus entrance away from the Town's Downtown at the new intersection of the Campus' primary vehicular street and Blue Ridge Road; thereby, the Campus does not add daily traffic to the Downtown streets south of State Street (US 70) and connects the Montreat Campus and the Campus by way of US highways (9 & 70) and Blue Ridge Road; and

WHEREAS, the Campus Master Plan is consistent with the EBM, particularly its primary guiding principle of Connected & Accessible, aiding, among other Town goals, Goal 6.4 (An enhanced and user friendly transit network); and

WHEREAS, the College has submitted the Campus Master Plan to the Town for approval as part of a conditional rezoning request of the Campus on July 31, 2023; and

WHEREAS, the Town's Planning Board reviewed and recommended approval of the Campus Master Plan on August 28, 2023; and

WHEREAS, the Town Council scheduled a public hearing to be held on _____ to consider the Campus Master Plan rezoning; and

Authority to form Development Agreements and Purposes of Development Agreements

WHEREAS, in Article 10, Chapter 160D of the North Carolina General Statutes, the North Carolina General Assembly authorizes the Town to form development agreements with developers, finding **(1)** development projects often occur in multiple phases over several years, requiring long-term commitments of both public and private resources; **(2)** these developments often create community impacts and opportunities that are difficult to accommodate within traditional zoning processes; **(3)** because of their scale and duration, these projects often require careful coordination of public capital facilities planning, financing, and construction schedules and phasing of the private development; **(4)** these projects involve substantial commitments of private capital, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development; and **(5)** these developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas. N.C. Gen. Stat. § 160D-1001; and

WHEREAS, recognizing the findings made by the General Assembly concerning the value of development agreements, the Town determined that the Campus and the Campus Master Plan

is a project suitable for formation of a development agreement and approved the College's conditional zoning request to allow development of the Campus as illustrated on the Campus Master Plan; and

WHEREAS, in addition to the General Assembly's findings, the Town through its Code provides that "[t]he intent of development agreements is to allow the town board flexibility in managing large projects which may have a variety of uses and purposes." Code § 1.10.1B and "[d]evelopment agreements are also intended to provide assurances of vested rights indefinitely, unless a timeframe is otherwise provided in the development agreement itself, in cases where a project may be constructed over time or in phases." Code § 1.10.1C; and

WHEREAS, the Town finds that forming a development agreement to govern the Campus and the Campus Master Plan is in the Parties' interests because the development agreement will allow for flexibility in managing the Campus and because the Campus Master Plan shows the Campus will have a variety of uses and purposes; and

WHEREAS, the Town finds that establishing a vested right allowing the College to develop the Campus using a single set of Development Regulations and Laws is in the interests of the Parties because the core characteristic of the ICD and the EBM's Institutional Campus Future Land Use is that the Campus should have "overall design integrity;" and

WHEREAS, the Town through its Code provides that "[t]o the extent that the development plan [in a development agreement] does not fall specifically within existing town zoning, the development agreement ordinance will create a new zoning district specifically for the development agreement's planning area" Code § 1.10.2C; and

WHEREAS, in its discretion, the Town Council adopted a procedure for review and approval of development agreements (Code § 1.10.3) and the procedure includes review of a development agreement by the Town's Planning Board for public input and Planning Board comment; and

WHEREAS, on August 28, 2023, the Planning Board held a public meeting concerning this Development Agreement, receiving public input and considering, among other matters, the ICD zoning district and the Campus Master plan, consistency of the Campus Master Plan with adopted town plans and policies; and recommendations for requirements that the Town Council should pursue as part of this Development Agreement; and

WHEREAS, the Planning Board, after closing the public hearing, found that the Campus Master Plan is consistent with the intent of ICD and consistent with the EBM and other applicable plans adopted by the Town; and further found that no new requirements were necessary to achieve the EBM and other Town policies; and

WHEREAS, after making its findings, the Planning Board recommended to the Town Council that this Development Agreement should be formed without new requirements because adoption of this Development Agreement is in the interests of the Town and its citizens; and

WHEREAS, on August 28, 2023, the Town Council reviewed the Planning Board's and Town staff's reports concerning this Development Agreement and set a public hearing concerning this Development Agreement for _____, 2023; and

WHEREAS, on _____, 2023, the Town Council held the public hearing concerning this Development Agreement and after closing the public hearing, the Town Council made the following findings:

1. The Parties recognize that careful coordination and integration of development of the Campus and Campus Master Plan with development of public infrastructure and facilities, including delivery of public water and sewer to the Campus is important and in the public's interest, and therefore the Parties have agreed to the integrated and joint schedule for development of the Campus and delivery of public water and sewer to the Campus which is set forth in **Exhibit C** and made a part hereof by reference.

2. The details concerning the Campus and the Campus Master Plan required by N.C.G.S. § 160D-1006 are set forth in **Exhibit D** and made a part hereof by reference.

3. The development of the Campus will **(A)** occur in multiple phases over several years, requiring a long-term commitment of both public and private resources, **(B)** create community impacts and opportunities difficult to accommodate within traditional zoning processes, **(C)** require careful coordination of public capital facilities planning, financing, and construction schedules and phasing of private development because of their scale, **(D)** involve substantial commitment of private capital and the College is unwilling to risk such private capital without sufficient assurances that the development standards that apply to the Campus remain stable through the extended period of development, and **(E)** forming a development agreement with the College provides better structure and management of the Development Approvals for the Campus and ensure their proper integrations into the Town's capital facilities programs.

4. After careful review and deliberation, the Town Council finds that the Campus constitutes development suitable to be planned and developed through a development agreement as permitted by Article 10 of Chapter 160D of the North Carolina General Statutes and that it is in the Town's interests to enter into this Development Agreement because significant benefits to the Town and its citizens will be realized as a result of the Campus and this Development Agreement.

5. The Town has published notice of, mailed notice of, posted on and near the Campus notice of and has held a public hearing at its Planning Board and Town Council concerning this Development Agreement as required by N.C.G.S. § 160D-1005 and the Code and the Town has otherwise completed all steps, conditions, and requirements necessary for the Town to consider the approval and adoption of this Development Agreement as permitted by law.

WHEREAS, after holding the legislative hearing and carefully considering the terms and conditions of this Development Agreement and its findings, the Town Council duly approves and adopts this Development Agreement as a legislative decision as required by N.C.G.S. §§ 160D-1003 and 1005 and directs its execution by the Mayor and attestation by the Town Clerk.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, and pursuant to North Carolina law and the Code, the Town and the College agree as follows:

TERMS AND CONDITIONS OF THIS DEVELOPMENT AGREEMENT

ARTICLE 1. RECITALS

- 1.1 Incorporation of Recitals. The Parties agree the above Recitals and Findings are true and correct and are incorporated as material terms of this Development Agreement and are binding on the Parties.

ARTICLE 2. DEFINITIONS

In interpreting and constructing this Development Agreement and its incorporated Exhibits, the following capitalized terms shall have the meanings set forth below wherever they appear in this Development Agreement.

- 2.1 *Campus* shall mean the land described in **Exhibit A** of this Development Agreement.
- 2.2 *The Campus Development Law* shall have the meaning defined in Section 3.7 of this Development Agreement.
- 2.3 *Campus Master Plan* shall mean the development plan attached as **Exhibit B** of this Development Agreement.
- 2.4 *Code* shall mean the Town's Land Use Code existing on the Effective Date.
- 2.5 *College* shall mean Montreat College, its successors or assigns.
- 2.6 *Developer* shall mean a person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.
- 2.7 *Development* shall mean the planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. When appropriate to the context, "development" refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this term.
- 2.8 *Development Approval* shall mean any administrative or quasi-judicial approval made pursuant to Chapter 160D of the North Carolina General Statutes that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of

appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to Chapter 160D, including plat approvals, permits issued, development agreements entered into, and building permits issued.

- 2.9 *Development Regulation* shall mean any unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain 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 adopted pursuant to Chapter 160D of the North Carolina General Statutes, or a local act or charter that regulates land use or development.
- 2.10 *Effective Date* shall mean the date this Development Agreement is executed by all Parties after the adoption of an ordinance at the Town approving this Development Agreement by the Town Council. The Town shall sign and deliver the Development Agreement to the College within three (3) calendar days of adopting ordinance approving the Development Agreement for the College to record the Development Agreement at the Buncombe County Register of Deeds. *See*, N.C.G.S. § 160D-1011.
- 2.11 *Laws* shall mean and include all ordinances, resolutions, regulations, comprehensive plans, land Development Regulations, policies, and rules adopted by the Town affecting the development of real property, and including, without limitation, laws governing permitted uses of real property, density, design, and improvements.
- 2.12 *Registry* means the Buncombe County Register of Deeds.
- 2.13 *State* means the State of North Carolina.
- 2.14 *Town* means the Town of Black Mountain North Carolina, its successors or assigns.

ARTICLE 3. DEVELOPMENT OF THE CAMPUS AND THE CAMPUS MASTER PLAN

- 3.1 Campus Development Regulations: This Development Agreement shall only apply to the Campus. The Campus is zoned ICD conditional zoning district and allows development of the Campus as illustrated on the Campus Master Plan. To the extent there is a conflict between general Development Regulations including the Code's zoning district regulations applicable to the Campus and this Development Agreement, this Development Agreement shall be deemed to have created a new zoning district as provided by the Code in section 1.10.2C and shall control. The College's currently anticipated phasing and schedule for developing the Campus is set forth on **Exhibit C**; however; the Parties acknowledge that the pace of Development at the Campus will be guided by the principles of the College's master planning: **(1)** Reinforce Revenue Sustainability, **(2)** Protect and Maintain Facilities, **(3)** Strengthen Academic Offerings, **(4)** Enhance a Vibrant Student Culture, and **(5)** Connecting the two Campuses and it is likely that the College's master planning will evolve and change over time. If the College changes the Campus Master Plan, the College will submit the revised Campus Master Plan as a revised **Exhibit B** of this Development Agreement to the Town for review and comment. Approval of the revised Campus Master

Plan shall be deemed a minor amendment of the Development Agreement approvable by Town staff. Upon Town staff approval of any revised Campus Master Plan, an amendment of the Development Agreement deleting the original **Exhibit B** and substituting the amended **Exhibit B** of this Development Agreement will be signed by the Town Manager or the Manager's designee and the College. The College will record such amendments in the Registry.

- 3.2 Availability of the Town's Water Utility to Serve the Campus: The Town owns and operates a municipal water system which includes twelve (12) wells and additionally purchases water from the City of Asheville. The Town's water service is currently available to the Campus by way of a 10-inch water line at the western edge of the Campus in the shoulder of Blue Ridge Road and the Town has sufficient capacity to serve the Campus; however the Parties recognize that as the Campus develops, adequate water pressure and volume will become challenging. The Campus Master Plan includes an internal street system which allows extension of the Town's water line from Blue Ridge Road across the Campus so that the Town's water system is looped and connected with the Town's existing water system located in Vance Avenue (the "Water System Extension"). The Parties agree that timely construction of the Water System Extension, all of which is within the Town's corporate limits, is important to development of the Campus and to improving water service for all Town citizens living near the Campus. Therefore, the Parties agree to plan together the Water Extension and the Town agrees to include the Water Extension as a project in its Capital Improvement Plan and to collaborate with the College as to planning and funding the Water System Extension.
- 3.3 Availability of the Metropolitan Sewerage District to Serve the Campus: The Metropolitan Sewerage District (the "MSD") is a publicly-owned utility organized under Chapter 162, Article 5 (Metropolitan Sewerage Districts) and provides sewer service to the Town. The MSD's sewer service is available to the Campus and the MSD has sufficient capacity to provide full sewer service to the Campus at final build-out of the Campus.
- 3.4 Availability of other Utilities and Services: The Town and College agree to work together to facilitate and encourage that waste water service, natural gas, fiber optics, other telecommunications and electricity are provided to the Campus by others and are of sufficient quality and quantity to permit the Campus to be completed and operated as intended by the College.
- 3.5 Reviewing of applications and Issuing Development Approvals: The College will submit applications for Development Approvals to the Town as provided in section 2.1.4 of the Code for administrative approval and issuing Development Approvals. The Campus Development Law (see, section 3.7) shall apply to review of applications and issuing Development Approvals allowing development of the Campus. The Town shall provide expedited review and approval of all applications and plans submitted by the College requesting Development Approvals for Development of the Campus, including without limitation, zoning, site plan, subdivision, water, site layout, subdivision, and grading and building plans, with an initial response delivered to Campus within no more than two (2) weeks of submittal of each request to the Town.

- 3.6 Cooperation and Assistance: The Town will assist and cooperate with the College in connection with reviews, approvals and permits issued by all local and State governmental agencies and public utilities, such as Duke Energy, Dominion Energy, telecommunications providers, the State of North Carolina, any other local, State or Federal government or governmental agency associated with or important for Development of the Campus. To this end, the Town agrees to grant easements and/or encroachment agreements within its rights-of-way to any of these entities to facilitate extension of such services to the Campus and, may, upon reasonable request, grant easements on the Town's property to these service providers.
- 3.7 Vested Rights to Complete the Campus; Application of Laws and Development Regulations: Except where a State or federal law is adopted after the Effective Date and the law mandates local government enforcement that has a fundamental or retroactive effect on Development or use of the Campus as provided in this Development Agreement or for one of the grounds set forth in the current (as of the Effective Date) version of N.C.G.S. § 160D-108.1(f)(1)(b)-(e), the Campus shall be subject only to the Laws and Development Regulations and policies enacted and applicable to the Campus at the time of the Town's approval of this Development Agreement by adoption of an ordinance (the "Campus Development Law"). Additionally, the College has made substantial expenditures in good faith in reliance upon existing Town laws and policies and this Development Agreement; therefore, no development moratoria shall apply to the College or the Campus in absence of an imminent threat to public health or safety. Laws, rules, regulations or policies enacted, adopted, formed or administered by the Town or any of its boards, commissions, officials or staff subsequent to the adoption of this Development Agreement, including but not limited to, land use, streets, buffers, the division of land, grading, landscaping, water, sewer, stormwater, setbacks, and signage, shall not directly or indirectly be applicable to any aspect of the Campus for a period of fifty (50) years after the Effective Date. As provided in N.C. Gen. Stat. §160D-1007(c), in the event that State or federal law is changed after the Effective Date in such a way that prevents compliance with this Development Agreement by the Town or the College, the Parties will review the terms of this Development Agreement and will work together in good faith to modify the affected provisions to accomplish the intended purpose of this Development Agreement and the economic benefits foreseen by the Parties when they entered into this Development Agreement.
- 3.8 Town Services: The Campus shall enjoy "best nation status" under all rate schedules adopted by the Town from time to time. "Best nation status" means that the rate charged for water and other services provided by the Town service usage, including but not limited to public water, shall be no higher than the lowest usage rate charged by the Town to any utility customer located within or outside the Town's corporate limits.

ARTICLE 4. DEFAULT, CURE PERIODS AND REMEDIES

- 4.1 Default, Cure Periods, Breach, and Remedies: As provided by N.C.G.S. § 160D-1008(d), the Parties have agreed to provide penalties and equitable remedies for breach of this Development Agreement other than the remedy authorized by N.C.G.S. § 160D-1008(c) and N.C.G.S. § 160D-1008(c) does not apply to this Development Agreement.

Subject to Section 6.1 of this Development Agreement (Force Majeure), the failure of either Party to comply with the terms of this Development Agreement shall constitute an “Event of Default” and if such defaulting Party fails to cure its default within thirty (30) days of its receipt of written notice of such Event of Default from the other non-defaulting Party identifying with reasonable particularity the Event of Default, the defaulting Party shall have breached this Development Agreement; provided, however, if such default is not reasonably capable of being cured within thirty (30) days, then the defaulting Party shall not be deemed in breach of this Development Agreement when the defaulting Party has commenced such cure within said thirty (30) day period and thereafter diligently prosecute the same to completion within an additional period not to exceed one hundred twenty (120) days.

Subject to the foregoing notice and cure periods, a breach of this Development Agreement entitles the non-defaulting Party to pursue all remedies available at law or equity, including but not limited to the remedies of specific performance and payment of damages resulting in breach of this Development Agreement; provided however any termination of this Development Agreement shall be limited to the portion of the Campus where such default occurred.

Recognizing the Parties have invested significant resources planning the Campus, and one of the purposes of this Development Agreement is to continue collaboration, cooperation and coordination between the Parties for their benefit and the benefit of the citizens of the Town, the Parties are establishing a process to ensure that all matters of concern or questions arising under this Development Agreement at any time during the Term are discussed between the Parties before such matters or questions rise to an Event of Default. Accordingly, either Party may request an informal business meeting with the other Party at any time during the Term of this Development Agreement. All informal business meetings shall be held at the Town’s offices. The Parties agree that all issues or concerns identified as a potential Event of Default by either Party shall be discussed at least one informal business meeting prior to either Party sending a notice of default. At every informal business meeting, the Town Manager or the Manager’s designee and representatives of the College shall attend. Unless otherwise agreed by the Parties, all business meetings shall be concluded by the end of the day when the meeting began.

Default, cure periods, breach, and remedies for breach of this Development Agreement shall be exclusively governed by this section of the Development Agreement.

ARTICLE 5. RECORDATION, TERM AND AMENDMENT

- 5.1 Recordation of Agreement: Pursuant to N.C.G.S. § 160D-1011, within fourteen (14) days after the Effective Date, the College shall record this Development Agreement in the Registry.
- 5.2 Term: The term of this Development Agreement shall be a period of fifty (50) years beginning on the Effective Date.

- 5.3 Amendment: This Development Agreement may be amended or canceled by mutual written consent of the Parties, their successors or assigns as provided by law. At any time during the term of this Development Agreement, the College acquires land contiguous with the Campus and Town Council rezones such land to ICD or its successor zoning district (whether in one or more parcels, or transactions) (collectively the “Additional Property”), this Development Agreement shall be deemed amended as a minor modification, and shall not be a major modification under N.C.G.S. § 160D-1006(e), and the Town shall execute an amendment of this Development Agreement that includes the Additional Property as the Campus to which this Development Agreement applies and transmit the amendment to the College. Minor modifications are approved by Town staff and the College, and shall be signed by the Parties. The College shall record all such amendments in the Registry.

Consistent with the purposes of this Development Agreement and permitted by N.C.G.S. § 160D-1006(e), at any time during the term of this Agreement any amendment to the times for performance by any Party stated in this Development Agreement shall be deemed to be a minor modification and shall not be a major modification under N.C.G.S. § 160D-1006(e). Minor modifications are approved by Town staff and the College, and shall be signed by the Parties. The College shall record all such amendments in the Registry.

ARTICLE 6. MISCELLANEOUS

- 6.1 Force Majeure: The Parties hereto shall not be liable for any failure to perform hereunder as a result of an external event or events beyond their respective control, including, without limitation, acts of the United States of America, acts of the State of North Carolina, embargos, fire, flood, drought, hurricanes, tornadoes, explosions, acts of God or a public enemy, pandemics, epidemics, strikes, labor disputes, vandalism, or civil riots. However, if any such event interferes with the performance by a Party hereunder, such Party shall diligently and in good faith act to the extent within its power to remedy the circumstances affecting its performance and to complete performance in as timely a manner as is reasonably possible.
- 6.2 Exhibits: The exhibits attached to this Development Agreement are fully incorporated, are material terms of this Development Agreement and shall be binding upon the Parties.
- 6.3 Severability: If any provision of this Development Agreement, or its application to any person, is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to accomplish the Parties’ original intent to achieve the economic outcomes they intended to the greatest extent possible. In any event, invalidation of any provision of this Development Agreement, or its application to any person, shall not affect any other provisions of this Development Agreement or its application to any other person or circumstance, and the remaining portions of this Development Agreement shall continue in full force and effect and the Parties shall cooperate to amend this Development Agreement so as to achieve the economic outcomes intended by the Parties when they formed this Development Agreement.
- 6.4 Notice: All notices or other communications required or permitted to be served hereunder shall be deemed served in accordance with this Development Agreement if the notice is:

(a) mailed in a sealed wrapper and deposited in the United States mail, certified mail, return receipt requested, postage prepaid (with delivery conclusively presumed to occur on the third (3rd) business day following such deposit absent evidence of actual failure of delivery) and a courtesy copy delivered via email to the email addresses below; or (b) deposited with a national overnight courier service for next day delivery that retains receipts of its deliveries, properly addressed (with delivery conclusively presumed to occur on the next business day following such deposit absent evidence of actual failure of delivery) and a courtesy copy delivered via email to the email addresses below:

TOWN:

Josh Harrold ICMA-CM, ACIP, CZO
Town Manager
Town of Black Mountain

Physical Address:
106 Midland Avenue
Black Mountain, NC 28711
josh.harrold@tobm.org

with copy to:

Craig Justus
Town Attorney
Town of Black Mountain

Physical Address:
11 N Market Street
Asheville, NC 28801
cjustus@vwlawfirm.com

COLLEGE:

Montreat College
Attn: John Beaghan,
Vice President for Finance & Administration
310 Gaither Circle
Montreat, NC 28757
cfo@montreat.edu

with copy to:

Beth Jones
Womble Bond Dickinson
555 Fayetteville Street
Suite 1100
Raleigh NC 27601
beth.jones@wbd-us.com

The Parties, by written notice given to the other, may designate any further or different names or addresses to which all notices or other communications shall be sent without said further or different names or addresses being considered amendments to this Development Agreement.

- 6.5 Assignment: The College may assign its rights and obligations under this Development Agreement, in part or in whole, to any successor or assign and the College shall be relieved of its covenants, commitments and obligations hereunder, provided that no assignment of a portion of the Campus shall relieve the College of its obligations under this Development Agreement with respect to the portion of the Campus remaining owned by the College. In the event that the College conveys the Campus in its entirety and assigns its rights and obligations hereunder to its successor in title to the Campus, the College shall be relieved of all of its covenants, commitments and obligations established by this Development Agreement.
- 6.6 Run with the Land: This Development Agreement shall run with the Campus and any portion thereof as it may be subdivided or recombined.
- 6.7 Entire Agreement: This Development Agreement contains the entire agreement between the Parties regarding the Development Agreement and all prior or contemporaneous oral or written drafts are merged into this Development Agreement. To the extent a conflict or inconsistency exists between this Development Agreement and any other document related to the Campus that is not merged into this Development Agreement, the provision which most encourages, promotes, and enables Development of the Campus controls.
- 6.8 Multiple Counterparts: This Development Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Development Agreement to produce or account for more than one such fully executed counterpart.
- 6.9 Applicable Law: This Development Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina.
- 6.10 Representations and Warranties of the Parties: The Town and the College, and the persons executing this Development Agreement on their behalf, represent and warrant, as applicable, that (a) such Party or person has the full power and authority to enter into this Development Agreement, to execute it on behalf of the Party indicated on the signature

page, and to perform the obligations hereunder, (b) such Party is acting on its own behalf and on behalf of its members, successors and assigns, (c) this Development Agreement is a valid and binding obligation, enforceable against the Parties in accordance with its terms and conditions, (d) entering into this Development Agreement does not conflict with any other agreements entered into by any Party, and (e) execution, delivery and performance of this Development Agreement has been duly and validly authorized by all necessary corporate or governmental action on its part. Specifically (and not as a limitation), the Town represents and warrants to the College that this Development Agreement has been pre-audited to ensure compliance with budgetary accounting requirements (if any) that apply thereto. In the event that any of the obligations of the Town in this Development Agreement constitute debt, the Town has complied, at the time of the obligation to incur the debt and before the debt becomes enforceable against the Town, with any applicable constitutional and statutory procedures for the approval of the debt. Notwithstanding the foregoing, it is not the intent to make any individual person personally liable for the performance or nonperformance of this Development Agreement.

- 6.11 Effect on Other Vested Rights: This Development Agreement does not abrogate any rights established or preserved by law, or that may vest pursuant to common law or otherwise in the absence of this Development Agreement.
- 6.12 Construction: The Parties agree that each Party and its counsel reviewed and revised this Development Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation or construction of this Development Agreement or any amendments or Exhibits hereto. This Development Agreement shall be reasonably interpreted and construed to encourage, promote, and aid the College so that the opportunities and positive community impacts of the Campus are fully realized by the Town, its citizens and the College.
- 6.13 Agreement to Cooperate Regarding Validity of the Development Agreement: Notwithstanding a lack of standing or subject matter jurisdiction, a third person may attempt to initiate a lawsuit challenging the validity of this Development Agreement or any provision thereof. In such an event, the Town and the College agree to cooperate with and assist each other in responding to such litigation and defending the validity of this Development Agreement and any provisions thereof; provided, however, each Party shall retain the right to pursue its own independent legal defense. In the event a third person or persons initiate(s) litigation against the Town concerning Development Approvals or permits, and zonings related to the Campus, the Town consents to the College's intervention but reserves unto itself all rights to determine the Town's strategies and defenses.
- 6.14 No Third-Party Beneficiaries: This Development Agreement is intended for the benefit of the Town and the College only. There are no other third person beneficiaries of this Development Agreement.
- 6.15 Confidential Information: Except to the extent required by applicable law, the Parties shall maintain the confidentiality of any trade secrets or confidential business information the College is required to provide to the Town in connection with this Development Agreement

or Development of the Campus. The College will highlight specific items that it determines to be its trade secrets or confidential business information in a separate attachment identified to the Town or will place such information in a separate attachment identified as “Confidential Business Information.” The Town will notify the College sufficiently in advance of any proposed disclosure of the College’s Confidential Business Information so that the College at its expense, may object to disclosure of such information.

- 6.16 E-verify: The Parties shall comply with the State of North Carolina labor hiring requirements of Article 2 of Chapter 64 of the General Statutes if applicable.
- 6.17 No Agency: Nothing herein shall be construed to mean that either Party is the agent or employee of the other Party.
- 6.18 Headings: All headings that appear after section numbers and section letters in this Development Agreement are included for convenience only and shall not affect the interpretation of this Development Agreement.
- 6.19 Estoppel Certificate: Upon request in writing from the College or its lenders to the Town, the Town will provide a Certificate in recordable form that confirms with respect to the Campus or portion of the Campus described in the request that there are no known violations or breaches of this Development Agreement and the Campus Development Law applies to the land identified in the request. The Town will respond to such request within ten (10) business days of the receipt of the request. If the Town does not respond to such request within said ten (10) day period, the Campus or the portion of the Campus described in the request will be deemed in compliance with all of the covenants and terms of this Development Agreement and the Campus Development Law applies to such land as is described in the request. A Certificate of such conclusion may be recorded in the Registry by the College, including a copy of the request and the notice of receipt, and it shall be binding on the Town. Such notice shall have the same effect as a Certificate issued by a Town under this Section.
- 6.20 No Waiver: No provision contained in this Development Agreement shall be deemed to have been waived, abandoned, or abrogated by reason of failure to enforce such provision as to an event or future events no matter how often failure to enforce may occur.
- 6.21 Lenders: The Town agrees to provide any lender who has recorded a deed of trust or mortgage against all or any portion of the Campus of which the Town has been given notice (each, a “Lender”) with written notice of any default relating to the College and/or the Campus given by the Town to the College. The Town agrees that notwithstanding anything to the contrary contained in this Development Agreement, Lender shall have an additional sixty (60) days from the date Lender receives notice of a default to cure any such default, provided that Lender shall not have any obligation to cure any such default.

{Signature pages follow}

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the day and year indicated above.

TOWN OF BLACK MOUNTAIN

By: _____
C. Michael Sobol, Mayor
Town of Black Mountain

[TOWN SEAL]

ATTEST:

By: _____
Savannah Parrish, Town Clerk

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, a Notary Public of Buncombe County, North Carolina, do hereby certify that C. Michael Sobol, Mayor of the Town of Black Mountain, a North Carolina municipality, personally came before me this day and acknowledged that he is the Mayor of the Town of Black Mountain, that this Development Agreement has been approved by the Town Council of the Town of Black Mountain by ordinance in accordance with the requirements of Article 10 of Chapter 160D and Town law, that he has been authorized by the Black Mountain Town Council to execute this Development Agreement on behalf of the Town of Black Mountain, that he knows the Corporate Seal of the Town of Black Mountain, that the Town of Black Mountain's Corporate Seal was affixed to this Development Agreement by Savannah Parrish, Town Clerk of the Town of Black Mountain, pursuant to authorization from the Town Council of the Town of Black Mountain, that this Development Agreement is the act and deed of the Town of Black Mountain, and that he acknowledged the due execution of this Development Agreement by him in the aforesaid capacity.

Witness my hand and official seal or stamp, this the ____ day of _____, 2023.

Notary Public

[NOTARY SEAL]

Print Name of Notary

My commission expires: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Tammy Holland, Town of Black Mountain Finance Director

MONTREAT COLLEGE, a North Carolina
non-profit corporation

By: _____
Name: _____
Title: _____

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, a Notary Public of the County and State aforesaid, certify
that, _____, _____ of Montreat College, a North Carolina non-profit corporation,
personally appeared before me, this day and acknowledged the due execution of this Development
Agreement for the purposes expressed therein.

WITNESS my hand and official seal or stamp, this the ____ day of _____,
2023.

[NOTARY SEAL]

Notary Public

Print Name of Notary

My commission expires: _____

EXHIBIT C

Development of the Campus

As provided by N.C.G.S. § 160D-1006(b), the College is setting forth the anticipated phases for Development of the Campus including commencement dates and interim completion dates at no greater than five-year intervals. These phases are projections of the future which are based on assumptions which may or may not occur over the life of this Development Agreement.

The actual pace of development of the Campus as well as development priorities at the Campus and the College will be informed by the guiding principles of the College's master planning: **(1)** Reinforce Revenue Sustainability, **(2)** Protect and Maintain Facilities, **(3)** Strengthen Academic Offerings, **(4)** Enhance a Vibrant Student Culture, and **(5)** Connecting the two Campuses.

As noted in the Campus Master Plan, **Exhibit B** of this Development Agreement, the Campus Master Plan is conceptual and illustrates the Campus as envisioned by the College on the Effective Date of this Development Agreement at full build-out of the Campus. The Campus Master Plan allows ICD uses as a matter of right, including, among other matters, alternatives to the number and arrangement of buildings, building shapes and sizes, lot arrangements, and street/parking circulation layouts, subject to approval by Town staff, but in no event shall the buffer along residential development along the outer boundary of the Campus described in the Campus Master Plan be modified without the College seeking a minor amendment of the Master Plan, **Exhibit B** of the Development Agreement. Modifications of the buffer shall be approved by Town staff and do not amend this Development Agreement and are not recorded in the Registry.

Therefore, the College may move phase lines and re-number phases as is necessary to complete the Campus without amendment of this Development Agreement.

Development of the Town's Water Utility System to better serve the Campus and Other Customers

As stated in section 3.2 of this Development Agreement, the Town's public drinking water is available to the Campus at Blue Ridge Road, but the Town's water lines should be extended through the Campus and looped back to the Town's existing water line in Vance Avenue because this interconnectivity of water lines improves the Town's water utility system and benefits the College and other customers of the Town's water system.

The College and the Town agree to cooperate, coordinate, and collaborate during development of the Campus to identify funding sources for these water system improvements and to plan, design, and construct them. The pace of development of this public infrastructure could impact the pace of development of the Campus.

Schedule for Development of the Campus

The College is the intended "end user" of the Campus which is being planned and developed as one of the College's two permanent campuses/homes. The College is managed in a fiscally conservative manner. History shows that the pace of change in higher education is rapid, and that

the College's growth is directly related to many external factors which are outside of the College's control, such as funding sources. Therefore, considering the foregoing factors, most of which are outside the College's control, the College sets forth below the College's mid-point (neither best case nor worst-case scenario) schedule for development of the Campus based upon the factors known to the College today. The actual pace of development could be substantially quicker or slower and it is foreseeable that the Campus will not be completely developed before the end of the term of this Development Agreement.

<u>PHASES</u>	<u>ANTICIPATED START</u>	<u>PROJECTED COMPLETION</u>
Phase 1	Jan 2024	Jan 2029
Phase 2	Jan 2029	Jan 2034
Phase 3	Jan 2034	Jan 2039
Phase 4	Jan 2039	Jan 2044
Phase 5	Jan 2044	Jan 2049
Phase 6	Jan 2049	Jan 2054

The failure to meet a commencement or completion date of this schedule does not, in and of itself, constitute a material breach of this Development Agreement and the College may request modifications of the dates as set forth on this **Exhibit C**, which shall be minor modifications of this Development Agreement, and shall not be a major modification under N.C.G.S. § 160D-1006(e), and the Town shall execute an amendment of this Development Agreement and transmit the amendment to the College. Minor modifications are approved by Town staff and the College and shall be signed by the Parties. The College shall record all such amendments in the Registry.

Exhibit D

N.C.G.S. 160D-1006(a) Required Information

1. A description of the property subject to the agreement and the names of its legal and equitable property owners. The College is the legal owner of the Campus. America's Christian Credit Union holds an equitable interest in the Campus as a lender providing funds to the College.
2. The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period. The duration of the Development Agreement is fifty (50) years as provided in section 5.2 of this Development Agreement.
3. The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design. The uses permitted on the Campus as a matter of right are all uses permitted generally and specially in the Town's Institutional Campus zoning district on the Effective Date of this Development Agreement as well as accessory uses to the Campus permitted as a matter of right on the two (2) acre parcel adjacent to Blue Ridge Road. The population densities, building types, intensities and general placement on the Campus and design of the Campus is illustrated on the College's Campus Master Plan, **Exhibit B** of this Development Agreement.
4. A description of public facilities that will serve the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development. In the event that the development agreement provides that the local government shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development, such as meeting defined completion percentages or other performance standards. Drinking water for the Campus will be supplied by the Town and the Town's existing system is available to provide service to the Campus. However, improvements to the Town's system will be necessary in the future to provide an appropriate level of service in terms of water pressure and volume to serve the Campus and other Town customers. The Parties agree to collaborate in planning and financing these improvements. The Metropolitan Sewerage District will supply public sewerage service to the Campus and is available to the Campus. Improvement to the Blue Ridge Road caused by construction of the Campus' primary entrance will be funded by the College and the improvements in the Blue Ridge Road public right of way will be dedicated by the College to NCDOT.
5. A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions agreed to by the developer that exceed existing laws related to protection of environmentally sensitive property. The College agrees to develop the

Tomahawk Branch Loop Trail shown on the Master Plan as a pedestrian and non-motorized bicycle trail open to the public from dawn to dusk.

6. A description, where appropriate, of any conditions, terms, restrictions, or other requirements for the protection of public health, safety, or welfare. **Exhibit B** of this Development Agreement provides the Campus Master Plan which includes conditions applicable to the Campus for the protection of public health safety or welfare while promoting and preserving the College's mission.
7. A description, where appropriate, of any provisions for the preservation and restoration of historic structures. The Manor House, built in 1919 and expanded in 1923, is located on the Campus and is approximately 24,400 square feet. Through the College's master planning process, there is growing support to fund a total restoration of the Manor House.

PIN #	OWNER
'060963702700000'	BLACK MOUNTAIN CENTER FOR RESEARCH AND TECHNOLOGY LLC
'060972089300000'	JOEL CHRISTOPHER CARTER (ETAL)
'060972386000000'	WEI HONGQIN
'060972584100000'	ZHANG XIYUN
'060972689600000'	TOWN OF BLACK MOUNTAIN
'060972881800000'	TOWN OF BLACK MOUNTAIN
'060973067100000'	HOME FREE LLC
'060973262500000'	HANTUCKER, LLC
'060973361800000'	HANTUCKER, LLC
'060973473100000'	PUBLIC SERVICE COMPANY OF NC
'060973577400000'	AMERICAN EAGLE INVESTMENTS, LLC
'060973770600000'	BROWNING ANNA
'060973877900000'	EKBM OFFICE BUILDING LLC
'060983084200000'	GREENSPAN KEVIN;GREENSPAN LISA
'060983208900000'	TOWN OF BLACK MOUNTAIN
'060983280400000'	E & M BLACK MOUNTAIN PROPERTIES LLC
'060983486800000'	BBB&T LLC
'060983792200000'	SVBSC LLC
'060983991500000'	B ALLEN PROPERTIES LLC
'060993948000000'	MONTREAT COLLEGE

'060994215300000'	LUCIANA REVOCABLE LIVING TRUST
'060994319100000'	NASSEF SHEILA KATHLEEN
'060994416100000'	DAAJ INVESTMENTS LLC
'060994611300000'	POMEROY PROPERTIES LLC
'060994612800000'	POMEROY PROPERTIES LLC
'060994716900000'	THE MANAGEMENT GROUP LLC
'060994724200000'	THE MANAGEMENT GROUP LLC
'060994823000000'	WARDEN AMANDA
'060994903700000'	WHEELON PAUL DOUGLAS
'061904016000000'	WHEELON PAUL DOUGLAS
'061904022800000'	REED FAMILY IRREVOCABLE TRUST
'061904144000000'	REED FAMILY IRREVOCABLE TRUST
'061904259500000'	MISCHA LLC
'061904427500000'	OTR LLC
'061904943700000'	SLUDER STEPHEN K
'061912392900000'	CUNNINGHAM CLIFFORD E;CUNNINGHAM LEANNE
'061913395200000'	BLACKSTONE TODD J;BLACKSTONE LINDSAY M.
'061913496700000'	BLACKSTONE TODD J;BLACKSTONE LINDSAY M.
'061913501500000'	COOK HENRY FORD III;COOK CLAIRE TAYLOR
'061913616300000'	JUSTIN REES TEAGUE REVOCABLE TRUST;THERESE ANN VANO REVOCABLE TRUST

'061913714400000'	CLARA P KELLY (LE)
'061913773800000'	SMITH JUDY V
'061913783500000'	MAGNOLIA PROPERTIES BLACK MOUNTAIN LLC
'061913793500000'	ROBERTS (LE) LEAH DELORES HAYNES;ROBERTS (LE) CLYDE E.
'061913839400000'	HANDSMAN SAMUEL JR;HANDSMAN KATHLEEN E
'061913920700000'	CRAIG ROBIN B;CRAIG MARTHA H
'061913946900000'	HILL GERMAINE W;HILL DAVID
'061913969300000'	WILKERSON TAMELA STAFFORD;WILKERSON JOSEPH JOSHUA
'061914055700000'	KIWANIS CLUB BLACK MOUNTAIN SWANNANOA FOUNDATION INC
'061914114200000'	MCCORMICK FRED A II;MCCORMICK NATASHA A
'061914123500000'	MILLER KEVIN CHRISTIAN;MILLER KATIE ANN
'061914218200000'	AMMONS DENISE CAROL
'061914221900000'	KAUFFMAN RACHEL L;KAUFFMAN SETH L
'061914260200000'	NORTH CAROLINA ACADEMY LLC
'061914314200000'	SCHWEIG TRUST
'061914321100000'	BUSH DEVON PAIGE
'061914331600000'	MOORE SAMUEL M;MOORE JULIA L
'061914414000000'	HUE STEVE K;NIELSEN-HUE STARR
'061914414800000'	ERWIN JASON L;ERWIN CYNTHIA L
'061914423700000'	ODOSKI IRENE A
'061914518500000'	BRASHER BRADLEY C;BRASHER CYNTHIA I

'061914705900000'	READY JON C;READY LAURA G
'061914716900000'	VEIL THEODORE;VEIL COREY RIMMER
'061923030300000'	MAGNOLIA PROPERTIES BLACK MOUNTAIN LLC
'061923075600000'	SPITZLEY STEPHEN C;SPITZLEY CONSTANCE H
'061923191100000'	SPITZLEY STEPHEN C;SPITZLEY CONSTANCE H

ADDRESS	CITY	STATE	ZIP CODE
PO BOX 418	BLACK MTN	NC	28711
2377 N FORK RIGHT FORK RD	BLACK MTN	NC	28711
822 N HAZARD AVE APT 305N	LOS ANGELES	CA	90063
971 LAUREL COVE WAY	SNELLVILLE	GA	30078
160 MIDLAND AVE	BLACK MTN	NC	28711
160 MIDLAND AVE	BLACK MTN	NC	28711
35 HILLVIEW RD	ASHEVILLE	NC	28805
8187 CAMELOT DR	HARRISBURG	NC	28075
8187 CAMELOT DR	HARRISBURG	NC	28075
PO BOX 1398	GASTONIA	NC	28053
PO BOX 16648	ASHEVILLE	NC	28816
1163 OLD US HWY 70 W	BLACK MTN	NC	28711
422 S MAIN ST	HENDERSONVILLE	NC	28792
3174 US HIGHWAY 70 W	BLACK MTN	NC	28711
160 MIDLAND AVE	BLACK MTN	NC	28711
3176 US HIGHWAY 70 W	BLACK MTN	NC	28711
4308 W CAYUGA ST	TAMPA	FL	33614
116 CHURCH ST	BLACK MTN	NC	28711
654 DARK HOLLOW DR	TRAPHILL	NC	28685
PO BOX 1267	MONTREAT	NC	28757

207 FOX ST	MORGANTON	NC	28655
6 GOLDMONT ST	BLACK MTN	NC	28711
15 ALPINE WAY	SWANNANOA	NC	28778
920 NC 9 HWY	BLACK MTN	NC	28711
920 NC 9 HWY	BLACK MTN	NC	28711
34 GOLDMONT ST	BLACK MTN	NC	28711
34 GOLDMONT ST	BLACK MTN	NC	28711
36 FALCON RIDGE RD	BLACK MTN	NC	28711
30 JORDAN RD	SWANNANOA	NC	28778
30 JORDAN RD	SWANNANOA	NC	28778
100 E COLLEGE ST	BLACK MTN	NC	28711
100 E COLLEGE ST	BLACK MTN	NC	28711
602 W STATE ST	BLACK MTN	NC	28711
1186 PATTON AVE	ASHEVILLE	NC	28806
431 OLD COUNTY HOME RD	ASHEVILLE	NC	28806
250 VANCE AVE	BLACK MTN	NC	28711
102 TERRY ESTATE DR	BLACK MTN	NC	28711
102 TERRY ESTATE DR	BLACK MTN	NC	28711
236 VANCE AVE	BLACK MTN	NC	28711
226 VANCE AVE	BLACK MTN	NC	28711

222 VANCE AVE	BLACK MTN	NC	28711
183 VANCE AVE	BLACK MTN	NC	28711
103 DILLING AVE	BLACK MTN	NC	28711
70 SKY HIGH DR	BLACK MTN	NC	28711
212 VANCE AVE	BLACK MTN	NC	28711
216 VANCE AVE	BLACK MTN	NC	28711
202 VANCE AVE	BLACK MTN	NC	28711
190 VANCE AVE	BLACK MTN	NC	28711
PO BOX 491	BLACK MTN	NC	28711
27 AMYS WAY	BLACK MTN	NC	28711
105 FRONT PORCH DR	BLACK MTN	NC	28711
109 TERRY ESTATE DR	BLACK MTN	NC	28711
19 AMYS WAY	BLACK MTN	NC	28711
PO BOX 1236	BLACK MTN	NC	28711
51 BLUE SAGE	LITTLETON	CO	80127
12 TIVOLI DR	ASHEVILLE	NC	28806
13 AMYS WAY	BLACK MTN	NC	28711
PO BOX 1201	BLACK MTN	NC	28711
5 AMYS WAY	BLACK MTN	NC	28711
7 AMYS WAY	BLACK MTN	NC	28711
99 TERRY ESTATE DR	BLACK MTN	NC	28711

167 VANCE AVE	BLACK MTN	NC	28711
161 VANCE AVE	BLACK MTN	NC	28711
103 DILLING AVE	BLACK MTN	NC	28711
78 TERRY ESTATE DR	BLACK MTN	NC	28711
78 TERRY ESTATE DR	BLACK MTN	NC	28711



Town of Black Mountain

160 Midland Avenue ♦ Black Mountain, North Carolina, 28711
Phone: 828-419-9373 ♦ Fax: 828-669-2030 ♦ TDD: 1-800-735-5962

NOTICE OF DEVELOPMENT AGREEMENT REQUEST (REGARDING NEIGHBORS WITHIN 200 FEET OF PROPERTY)

DATE: **August 11, 2023**

TO: **Property Owner**

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

APPLICANT NAME: **Montreat College**

PROPERTY ADDRESS: **191 Vance Avenue**

PIN #: **0609-93-9480.00000**

CURRENT ZONING CLASSIFICATION: **ICD**

REQUESTED ZONING CLASSIFICATION: **CZ-ICD**

CURRENT LAND USE: **college campus**

PROPOSED LAND USE: **college campus**

SIZE OF PARCEL: **89 acres**

***A public meeting of the Planning Board on this matter will be held Monday, August 28, 2023,
@ 6:00 p.m. in the Council Chambers of Town Hall at 160 Midland Avenue.***

This is your notification for this request specified under 1.5.4 of the Land Use Code for the Town of Black Mountain. Section 1.5.4 (G) and (I) indicate that notice be provided to all property owners within 200 feet of the site's property lines. Notice of the time, date and place of the hearing will be published in the Black Mountain News in accordance with the Land Use Code of the Town of Black Mountain.