



BLACK MOUNTAIN TOWN COUNCIL MINUTES

May 13, 2024 | Regular Meeting | Time: 6:00 P.M.

Town Hall Council Chambers | 160 Midland Avenue, Black Mountain, NC 28711

The Black Mountain Town Council held their regular meeting on Monday, May 13, 2024, at 6:00 p.m. in the Council Chambers of Town Hall, 160 Midland Avenue, Black Mountain, NC 28711.

1. CALL TO ORDER

Mayor C. Michael Sobol called the meeting to order at 6:00 p.m. with the following members in attendance: Mayor C. Michael Sobol, Vice Mayor Archie Pertiller, Council Member Alice Berry, Council Member Doug Hay, Council Member Pam King, and Council Member Ryan Stone.

The following staff members were present: Josh Harrold, Town Manager; Jessica Trotman, Assistant Town Manager/Planning Director; Wesley Barker, Town Clerk; Angela Reece, Project & Facilities Manager; Josh Henderson, Recreation & Parks Director; John Coffey, Fire Chief; Steve Parker, Police Chief; Jamey Matthews, Public Works Director. Attorney Brian Gulden was also present.

Mayor Sobol led those in attendance in the pledge of allegiance and a moment of silence, then read the ethics statement.

2. PROCLAMATIONS, AWARDS, RECOGNITIONS, SPECIAL RESOLUTIONS

Mayor C. Michael Sobol read a proclamation recognizing the Mayors Monarch Butterfly Pledge.

3. CITIZEN COMMENTS

Amy Parker, Town resident, spoke on the proposed social district.

4. COMMUNICATIONS FROM STAFF, COUNCILS, COMMISSIONS & AGENCIES

- A. Black Mountain Beautification Committee Annual Report.** Committee member Barbara Reed gave a presentation to the Council on beautification work the committee performs throughout the town including Town Square, 26 public garden sites, 51 plant containers throughout downtown, seasonal decorations, annual garden sale, community improvement award program, seed money award program, deck the trees, and litter sweeps. The committee

thanked the Town for their partnership and financial support. For FY25, the committee has applied to the town for funding requesting \$14,000 to continue their efforts. The Council thanked Barbara for her presentation.

5. CONSENT AGENDA

Town Manager Josh Harrold reviewed the consent agenda items with the Town Council.

- A. Adoption of Meeting Minutes:** March 28, 2024 Budget Work Session, April 4, 2024 Agenda Meeting, April 8, 2024 Regular Meeting, April 11, 2024 Budget Work Session, April 18, 2024 Budget Work Session, April 25, 2024 Budget Work Session.

Council Member Doug Hay made a motion to approve all minutes as presented. A vote of 5-0 in favor.

B. Monthly Property Tax Collector Report.

Council Member Doug Hay made a motion to approve the report. A vote of 5-0 in favor.

C. Consideration of Budget Amendments.

- 1) *Carver Floor Repair*
- 2) *Increase in Property Tax Late List Penalties*
- 3) *Fire Department recognition of funds received from Buncombe County Dispatch*

Adjustment Number	Description	Summary	Account Number	Account Name	Sum of Amount
BA0000194	BAMEND - Carver Floor	Additional funds needed to complete carver floor repair. Quote accepted by the Board on 04/16/24	100-0000-48900	Appropriated Fund Balance	\$3,600.00
			100-4615-52310	R & M - Building	\$3,600.00
BA0000196	Increase in Property Tax Late List Penalties	Increase in the amount of Late List penalties collected for property tax and an increase in Buncombe County Schools distribution expense of late list penalties	240-0000-47050	Penalties and Fines - Property Tax	\$1,000.00
			240-0000-55050	Public School State Mandated Payment	\$1,000.00
BA0000197	BAMEND - Fire Dept Buncombe County Reimbursement	Reimbursement for employees wages from Buncombe County Dispatch	200-0000-47016	Reimbursements	\$34,036.00
			200-4520-50100	Salaries - Regular	\$29,736.00
			200-4520-50102	Salaries - Overtime	\$500.00
			200-4520-50199	Salaries - Off Duty	\$2,800.00
			200-4520-52316	R & M - Vehicle	\$1,000.00

Council Member Doug Hay made a motion to approve the budget amendments as presented. A vote of 5-0 in favor.

D. Consideration of Riverwalk Greenway Capital Project Amended Ordinance.

The purpose of this item is to amend the capital project ordinance for the Riverwalk Greenway to reflect the split in the original project to sections A & B and to recognize the changed alignment from the original alignment.

Council Member Doug Hay made a motion to amend the Riverwalk Greenway Capital Project Ordinance as presented. A vote of 5-0 in favor.

**Town of Black Mountain
Riverwalk Greenway
Capital Project Fund Ordinance Amendment**

Ordinance: O-24-03

BE IT ORDAINED by the Town Council of the Town of Black Mountain, North Carolina, that, pursuant to the Local Government Budget and Fiscal Control, a local government may, in its discretion, authorize and budget for a capital project or a grant project in a project ordinance adopted pursuant to G.S. 159-13.2. A project ordinance authorizes all appropriations necessary for the completion of the project and neither it nor any part of it need be readopted in any subsequent fiscal year; and the following Capital Project Fund Ordinance is hereby amended as follows:

Section 1: The project authorized is for the purpose of bike and pedestrian improvements. This project will include a multi-use path, sharrows, and sidewalk improvement from the existing Flat Creek Greenway trailhead to the existing Riverside Greenway near Riverside Park and an extension west near NC9 and existing culvert.

Section 2: The Town and NCDOT amended the original project to include ROW and construction as eligible phases of work, added funding and extended the completion date of the project. Total of Riverwalk Greenway Capital Project will be \$4,910,000.

Section 3: The original Riverwalk Greenway NCDOT state project EB-5547 has now been split into Phases EB-5547A and EB-5547B. Each phase will have its own funding.

Section 4: The original Riverwalk Greenway Project contains previously funding and expenses of \$705,541. These items will remain separate from the amended work and funding contained within the split of the amended contract EB-5547.

Section 5: Phase EB-5547A begins at the intersection of NC9 and Sutton Ave and ends at Black Mountain Avenue. Total Contract \$2,940,000 consisting of Federal Grant Funds in the amount of \$2,352,000 and Match Funding of \$588,000. \$1,171,000 of previously awarded funds and expenses totaling \$705,541 prior to the split, are included within Phase A of this project.

Section 6: Phase EB-5547B begins at Black Mountain Ave and ends at the existing trailhead of In the Oaks Trail. Total Contract \$1,970,000 consisting of Federal Grant Funds in the amount of \$1,576,000 and match funding of \$394,00. Phase B contains \$987,750 of previously awarded funding prior to the project split.

Section 7: The Town of Black Mountain defines a "Capital project" as a project financed in whole or in part by the proceeds of bonds, notes or debt instruments or a project involving the construction or acquisition of a capital asset with expenditures that span across multiple fiscal

years.

Section 8: The officers of this unit are hereby directed to proceed with the capital project within the terms of the grant documents, and the budget contained herein.

Section 9. The following anticipated Revenues are hereby adopted:

<u>Budgeted Revenues</u>	<u>Prior Authorized</u>	<u>Change</u>	<u>Amended Funding</u>
Grant - NCDOT	1,727,000.00	2,201,000.00	3,928,000.00
Match Funding - Buncombe County	400,000.00	0.00	400,000.00
Match Funding -Town Transfer In	298,750.00	283,250.00	582,000.00
Total Funds	\$2,425,750.00	\$2,484,250.00	\$4,910,000.00

Section 10. The following anticipated appropriations are hereby adopted:

<u>Budgeted Expenses</u>	<u>Prior Anticipated</u>	<u>Change</u>	<u>Amended Expense</u>
Professional Services - Design, CEI	\$1,217,000.00	\$523,000.00	\$1,740,000.00
Easements/Row Acquisition	\$0.00	\$60,000.00	\$60,000.00
Construction	\$1,208,750.00	\$1,901,250.00	\$3,110,000.00
Total Expenses	\$2,425,750.00	\$2,484,250.00	\$4,910,000.00

Section 11. The Riverwalk Greenway Capital Project Fund shall increase by \$2,751,250.

Section 12. The Finance Director is hereby directed to maintain within the Capital Project Fund sufficient specific detailed accounting records to satisfy the disclosure requirements of all the contractual agreements, if applicable.

Section 13. The Town Manager and/or the Finance Director has the authority to transfer funds; both expenditures and revenues, between the accounts contained within the capital project as may be necessary, provided however that the total expenditures equal the total revenues and that expenditures may not exceed the project total without an amended ordinance from council.

Section 14. Copies of this Capital Project Ordinance shall be furnished to the Town Clerk, the Town Manager and the Finance Director for the direction in carrying out this project.

Section 15. Authorized project expenditures represent appropriations necessary for the completion of projects and therefore do not require re-appropriation in any subsequent fiscal year. However, per G.S. 159-13.2 information on project ordinances will be included in the annual budget. Each year the finance officer shall include within the budget information in such detail as he or the governing board may require concerning each grant project or capital project. This information will be detailed for any new project funds expected to be authorized by project ordinance during the budget year and include information on projects authorized by previously adopted project ordinances which have remaining appropriations

available for expenditure during the budget year.

Duly adopted this 13th day of May 2024.

6) PUBLIC HEARING

A. Public Hearing for Text Amendment to Chapter 20, Article V, Nuisances.

Planning Director Jessica Trotman stated with the adoption of 160D and to streamline the enforcement process, text amendments to the Nuisance chapter of the Town Code of Ordinances have been proposed to clarify how notices are sent and to make a clearer process for abatement. *Vice Mayor Archie Pertiller made a motion to open the public hearing. A vote of 5-0 in favor. The time was 6:38 p.m. With no public comment, Council Member Doug Hay made a motion to close the public hearing. A vote of 5-0 in favor. The time was 6:39 p.m.*

With no further discussion Vice Mayor Archie Pertiller made a motion to approve the following ordinance to amend. A vote of 5-0 in favor.

AN ORDINANCE TO AMEND CHAPTER 20, ARTICLE V, NUISANCES, OF THE TOWN OF BLACK MOUNTAIN CODE OF ORDINANCES

Ordinance #O-24-04

WHEREAS, the Black Mountain Code of Ordinances was adopted by the Town Council on the 13th day of December, 1993, and the Black Mountain Land Use Code was adopted by the Town Council on the 11th day of January, 2010; and

NOW, THEREFORE, BE IT RESOLVED that Chapter 20, Article V, Nuisances, of the Town of Black Mountain Code of Ordinances, be amended to the following:

ARTICLE V. NUISANCES

Sec. 20-202. Lots to be kept clean; accumulation of rubbish prohibited.

(a) It shall be a violation of this article for any person to:

1. Scatter refuse or litter on any public or private street, area or place.
2. Cast, throw, place, sweep or deposit anywhere within the town limits any refuse or trash in such a manner that it may be carried or deposited by the elements upon or in any street, sidewalk, alley, storm drain or other public place or into any occupied or unoccupied premises within the town.
3. Throw or deposit any refuse, trash or debris in any stream or body of water.

(b) It shall be a violation of this article for any vehicle transporting loose materials within the town limits to transport the same without suitable cover.

Sec. 20-203. Accumulations prohibited.

- (a) It shall be unlawful for any owner, tenant, agent or person in control of any vacant lot or premises within the town to permit to remain thereon any high grass or weeds exceeding 12 inches in height (excluding properties used for grain and/or hay crops and properties fenced for the housing of horses or cattle), empty bottles, empty cans, abandoned automobiles, automobile bodies or parts, trash, filth, debris, garbage, or rubbish or any kind whatsoever, and it shall be the duty of any owner, tenant, agent or person in control of any vacant lot or premises within the town limits to keep the same in a clean, healthy, wholesome, and sanitary condition at all times.
- (b) It shall be unlawful for any construction contractor, demolition contractor, and/or property owner to fail to provide on-site container for loose debris, paper building material waste, scrap building material, and other trash produced by those working on the site. All such material shall be kept in a reasonably clean and litter-free condition. Construction sites shall be kept clean and orderly at all times.
- ~~(c) If any person, after having been ordered to abate a public nuisance described in this article, fails, neglects or refuses to abate or remove the condition constituting the nuisance within 15 days from receipt of the order, the town manager or his designee shall cause the condition to be removed or otherwise remedied by having employees of the town or a private contractor hired by the town go upon such premises and remove or otherwise abate such nuisance under the supervision of an officer or employee designated by the administrative officer. In such instances, weeds or grass shall always be cut to a height satisfactory to the manager or his designee.~~

Sec. 20-204. Notice of violation or nonconformity.

Any notice of violation of this article or nonconformity with this article shall be in writing. Written notice of the violation shall be delivered to the **property owner** ~~violation~~ **by first class mail.** ~~or, in lieu of had delivery, shall be sent to the violator via certified mail.~~ Copies of all notices of violation shall be kept and maintained by the zoning administrator or by the building inspection department, and said records shall be made available to the ~~board of aldermen~~ **town council**.

Sec. 20-205. Action by town after due notice; assessment of costs; lien.

If any person, after having been ordered to abate a public nuisance described in this article, fails, neglects or refuses to abate or remove the condition constituting the nuisance within 20 days from the date the notice of violation was mailed and not returned undeliverable, the town manager or the town manager's designee shall cause the condition to be removed or otherwise remedied by having employees of the town or a private contractor hired by the town go upon such premises and remove or otherwise abate such nuisance under the supervision of an officer or employee designated by the administrative officer. In such instances, weeds or grass shall be cut to a height satisfactory to the town manager or the town manager's designee.

If the owner of the property, ~~after due notice,~~ has failed or refused to remove the trash, garbage, or refuse, or to cut the grass or weeds, **within 20 days from the date the notice of violation was mailed and not returned undeliverable,** and the town **subsequently** has **removed debris or cut the grass or weeds** ~~been authorized by the board of aldermen to remove debris or cut the grass or weeds and has so acted,~~ in addition to all other remedies, the town may assess costs incurred by the **action** ~~it,~~ and this shall be a charge against the person responsible and shall be a lien against the property from which the trash, garbage, or refuse has been removed or the grass or weeds have been cut.

If the nuisance is a condition that is dangerous or prejudicial to the public health or public safety, the town has authority to summarily remove, abate, or remedy everything that is danger or prejudicial to the public health or public safety. Pursuant to this section, the town council may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety. The expense of the action shall be paid by the person in default. If the expense is not paid, the expense is a lien on the land or premises where the nuisance occurred. Such lien shall have the same priority and be collected as unpaid ad valorem taxes.

Sec. 20-206. Responsibility for enforcement.

The enforcement of the provisions of this article shall be the duty and responsibility of the zoning administrator or other persons authorized by the **town council** ~~board of aldermen.~~

Sec. 20-207. Penalty

Any person continuing to violation any provision or requirements of this article after notice of violation has been issued to him or any person willfully failing, refusing, or neglecting to comply with any such provision or requirement shall, in addition to any other remedy, be issued a notice and citation for which a civil penalty of \$50.00 shall be assessed for each offense, with each and every day of violation being a distinct and separate offense. This civil penalty shall be enforced by an action brought in the general courts of justice of the state by the zoning administrator or other town official charged with the duty of enforcing this article, and such enforcement shall be by civil action in the nature of a debt.

Sec. 20-207. Injunction and order of abatement.

The town may apply to the Court for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings.

In addition to an injunction, the Court may enter an order of abatement as a part of the judgement in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or

other moveable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the Court, the defendant may be cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

READ, APPROVED, AND ADOPTED by a vote of __5__ to __0__ this the 13th day of May 2024.

B. Public Hearing for Text Amendments to Chapter 43, Article VI, to add Social District.

Planning Director Jessica Trotman stated that the staff is not proposing a recommendation to the Town Council at this time on this item. She then gave an overview of this agenda item stating Zach Hinkle, with White Horse, and Judi Melton are requesting the Town adopt an ordinance to establish a social district. Jessica briefly explained some of the regulations and considerations as it relates to North Carolina Session Law 2022-49, enacted on June 30, 2022, which permits municipalities to establish/designate social districts, where alcoholic beverages may be consumed publicly within specific boundaries and under certain regulations. ***Council Member Doug Hay made a motion to open the public hearing. A vote of 5-0 in favor. The time was 6:44 p.m.***

Zach Hinkle and Judi Melton spoke to the Council and gave a presentation about a social district in Black Mountain.

Ken Floyd, owner of Monte Vista Hotel, spoke in support of a social district citing an economic opportunity.

Mike Baldwin, 300 New Bern Ave., spoke in support of a social district.

Michelle Brigante, 19 Rantis Ln., spoke in support of a social district.

Jen Galloway, 103 Brookhaven Dr., was not in support of a social district, stating the Council should allow more resident comments before deciding.

Jan Lupnacca, 54 Old Greybeard Loop, spoke on concerns with the social district citing parking concerns, logistic issues, policing and adherence to rules.

Trevor Rudisill, 406 W. State St., and business owner of Peri's Social House, spoke in favor of a social district.

Sarah Vekasi, 118 Beech St., and Cherry St. business owner, emailed her public comments to Council regarding her concerns over the social district.

Jennifer Smith, 105 Beech St., emailed her public comments to Council regarding her concerns over the social district.

Melinda Hester, Executive Director of the Chamber of Commerce, provided the Council with feedback from the Chamber Board of Directors and Sourwood Festival committee.

Council Member Doug Hay made a motion to close the public hearing. A vote of 5-0 in favor. The time was 7:15 p.m.

Planning Director Jessica Trotman presented examples to the Council for a social district, stating they could tailor a social district on a weekend basis, for a trial period, only during special events, the hours of operation, or even delay a decision if they wish. The draft ordinance presented to the Council in their agenda packet is where those amendments can be made before adopting it.

Major Chris Kuhn with the Police Department, read a statement to the Council by Police Chief Steve Parker regarding a proposed social district.

Concerns with pedestrians and traffic along Broadway St. were discussed. Council Member Doug Hay stated that festivals and special events might not be a good way to compare “normal use” if a social district was established only during these times. Council Member Pam King stated with the Town’s recent resolution for single-use plastic reduction, she would like to see the use of metal cups if a district was established. Vice Mayor Archie Pertiller suggested a social district be only Thursday through Sunday, from the hours of 11am-10pm, with no plastic cups being permitted, and for the district boundaries being from the intersection of Dougherty Street to N. Ridgeway Street, on a trial period from July 1, 2024 to December 31, 2024. A continued lengthy discussion ensued among Council members and staff.

Council Member Pam King then made a motion to continue the public hearing for the social district to a special called meeting on Wednesday, May 22, 2024 at 8:30 a.m. in the Council Chambers at Town Hall. The Town Manager will also present his recommended FY24-25 Budget during this special meeting. A vote of 5-0 in favor.

The Mayor called for a recess at 8:03 p.m. The meeting resumed at 8:15 p.m.

C. Public Hearing for Conditional Zoning Request for Montreat College- #O-23-22.

Planning Director Jessica Trotman provided an update on Montreat College’s request for conditional zoning to expand their Black Mountain Campus. The zoning district is currently institutional campus district (ICD), and they are asking to be rezoned to institutional campus conditional zoning district (ICD-CZ). Conditional zoning ties the development to a site-specific plan. The Planning Board heard the request at their regular meeting on September 25, 2023, and voted unanimously to recommend the request. Montreat College is not requesting any uses that aren’t already allowed in the current ICD. Further, this item was discussed at the November 11, 2023 Council meeting when the first public hearing was held. Since that meeting, the attorneys from Montreat College and the Town worked to edit the list of conditions proposed for the zoning request. Jessica stated there are currently 18 conditions

with the proposed conditional zoning district. These conditions are included within the proposed ordinance.

Council Member Doug Hay made a motion to open the public hearing. A vote of 5-0 in favor. The time was 8:31 p.m.

Philip Kosnett, 10 Red Plum Ln., and Montreat College Board of Trustees Member, spoke in favor of the proposed conditional zoning district and the benefits it would bring to the college and to the town.

Mike Dixon, 107 Washington Ave., spoke in opposition to the 75-foot building height maximum, compared to the base zoning in ICD of 35 feet. Mr. Dixon referenced the Town's Land Use Ordinance on building heights and slope; and referenced Montreat College's master plan document about number of building stories for dorms being three stories.

Todd Blackstone, 102 Terry Estates Dr., spoke to the Council on the proposed conditional zoning. Mr. Blackstone's property borders Montreat College's property on multiple sides and would be directly impacted. Mr. Blackstone made comments about access from Vance Ave. and Terry Estates Dr., the footpaths and accessibility to the College campus. He also asked that Council think of the impact this campus would have on his neighborhood.

Tom Widmer, 218 Tennessee Rd., Montreat, and Town of Montreat Commissioner, spoke in support of the proposed conditional district for Montreat College.

With no other public comments, Vice Mayor Archie Pertiller made a motion to close the public hearing. A vote of 5-0 in favor. The time was 8:53 p.m.

Discussion ensued among Council Members, the Planning Director and Maggie Carnevale, the master plan architect for Montreat College's Black Mountain campus. Ms. Carnevale explained the 75-foot building height stating it gives leeway for building design and roof pitch.

Further discussion took place among Council Members, the Planning Director, and the Town Attorney. A suggestion was made to amend a portion of proposed condition number 11 which currently states the following: "...To this end, resident halls (maximum of 4) on the Campus shall not exceed four (4) stories at a maximum height of seventy-five (75) feet..." to be sixty-five (65) feet.

Council Member Ryan Stone made a motion to approve ordinance #O-23-22 to add Section 4.7.16 to Appendix A, Land Use Code, Chapter 4, Section 4.7 entitled "Institutional Campus District Conditional Zoning (ICD-CZ) for Montreat College property located at 191 Vance Ave., PIN #0609-93-9480.00000," and that the amendment is consistent with the comprehensive plan and is reasonable and in the public interest in that

it promotes development of underutilized property with existing infrastructure and allows design and connection to balance the needs of pedestrians, drivers, cyclists, and transit users. Further, the “Montreat College Conditional Zoning Conditions for Property located at 191 Vance Ave. (approx. 89 acres); PIN No. 060993948000000,” document should reflect an amendment to condition number 11 that reads: “...To this end, resident halls (maximum of 4) on the Campus shall not exceed four (4) stories at a maximum height of sixty-five (65) feet...” and be attached to this ordinance and is otherwise approved as presented. A vote of 5-0 in favor.

AN ORDINANCE TO ADD SECTION 4.7.16 TO APPENDIX A, LAND USE CODE, CHAPTER 4, SECTION 4.7, TO ADD INSTITUTIONAL CAMPUS DISTRICT CONDITIONAL ZONING FOR MONTREAT COLLEGE PROPERTY LOCATED AT 191 VANCE AVENUE, PIN #0609-93-9480.00000

Ordinance #0-23-22

WHEREAS, the Town of Black Mountain Planning Board is charged with reviewing and updating land use planning, zoning and subdivision regulations; and

WHEREAS, the Planning Board made a commitment to the Town Council to review the text of the Land Use Code in the years since its adoption to address any residual inconsistencies in the text and to look for opportunities to clarify or improve text; and

WHEREAS, upon recommendation of the Planning Board, the following text amendment is consistent with the comprehensive plan and reasonable in the public interest because it supports design principle one for development of underutilized land and served by infrastructure and design principle four for connection and design to balance the needs of pedestrians, drivers, cyclists, and transit users.

WHEREAS, the Town of Black Mountain has the authority, pursuant to Article 7 of Chapter 160D of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and may amend regulations from time to time in the interest of public health, safety, and welfare; and

WHEREAS, the Town Council finds that the land use code text amendment is consistent with the comprehensive plan and is reasonable and in the public interest because of the following findings:

Allows development of underutilized land that is served by infrastructure and is connected and designed to balance the needs of pedestrians, drivers, cyclists, and tourist users.

WHEREAS, after notice duly given, a public hearing was held on November 13, 2023, as part of the regularly scheduled Town Council meeting at 6:00 p.m. in the Council Room of Town Hall, 160 Midland Avenue.

NOW, THEREFORE, BE IT RESOLVED that Chapter 4, Section 4.7 of the Town of Black Mountain Land Use Code, Appendix A be amended to add Section 4.7.16 entitled Institutional Campus District Conditional Zoning for Montreat College property located at 191 Vance Ave., PIN #0609-93-9480.00000, with the following agreed upon conditions between Montreat College and the Town of Black Mountain. *(Attached hereto as ‘Appendix A’)*

This ordinance shall not be effective until the stipulated list of conditions is consented to in writing by the applicant and all owners of the subject property. Upon such written consent, this ordinance shall be effective retroactive to the date of its adoption.

READ, APPROVED AND ADOPTED, by a vote of 5 to 0 on this the 13^h day of May 2024.

D. Public Hearing for Map Amendment for Montreat College- #Z-O-23-23.

This requested map amendment would amend the Town’s Zoning Map to reflect the Institutional Campus Conditional Zoning District (ICD-CZ) for Montreat College. Currently, the zoning district is Institutional Campus District (ICD). The Planning Board heard this request at their regular meeting on September 25, 2023, and recommended the conditional rezoning request unanimously.

Council Member Ryan Stone made a motion to open this public hearing. A vote of 5-0 in favor. The time was 9:23 p.m. With no public comments, Vice Mayor Archie Pertiller made a motion to close the public hearing. A vote of 5-0 in favor. The time was 9:24 p.m.

Vice Mayor Archie Pertiller made the motion to approve Ordinance #Z-O-23-23, amending the zoning map to conditionally zone the Montreat College Black Mountain campus as Institutional Campus District Conditional Zone (ICD-CZ) and that the zoning map amendment is reasonable and in the public interest in that the overall size of the tract is reasonable compared to the size of the zoning district in which the property is located, it is consistent with the comprehensive plan, the impact to adjacent property owners is reasonable and the benefits of the rezoning outweigh any potential inconvenience or harm to the community and allowed uses within the proposed rezoning district are similar to the permitted uses as currently zoned.

**AN ORDINANCE AMENDING THE ZONING MAP TO ADD MONTREAT COLLEGE
PROPERTY LOCATED AT 191 VANCE AVENUE, PIN #0609-93-9480, AS AN
INSTITUTIONAL CAMPUS DISTRICT CONDITIONAL ZONE**

ORDINANCE NO. #Z-O-23-23

WHEREAS, the Town of Black Mountain has the authority pursuant to Article 6 of Chapter 160D of the North Carolina General Statutes, to adopt zoning regulations, to establish zoning districts and to classify property within its jurisdiction according to zoning district, and may amend said regulations and district classifications from time to time in the interest of the public health, safety and welfare; and

WHEREAS, a comprehensive amendment to the Town's zoning regulations was adopted on January 11, 2010, (Ordinance No. #O-10-01) and is codified in Appendix A of the Town of Black Mountain Code of Ordinances (herein "Zoning Ordinance"), and maps dividing and classifying the property within the Town's zoning jurisdiction were adopted on January 11, 2010, Ordinance No. #O-10-01) and are on file and maintained in the Offices of the Town of Black Mountain Planning and Development Department (herein "Official Zoning Map"); and

WHEREAS, this proposed amendment is consistent with the Town of Black Mountain Comprehensive Plan and other official plans of the Town and is determined to be reasonable and in the public interest for the following reasons:

1. The overall size of the tract of land proposed for rezoning is reasonable compared to the size of the zoning district in which the subject property is located.
2. The proposed rezoning is consistent with the comprehensive plan.
3. The impact to the adjacent property owners and the surrounding community is reasonable and the benefits of the rezoning shall outweigh any potential inconveniences or harm to the community.
4. The allowed uses within the proposed rezoning district are similar to the permitted uses as currently zoned.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN OF BLACK MOUNTAIN
TOWN COUNCIL THAT:**

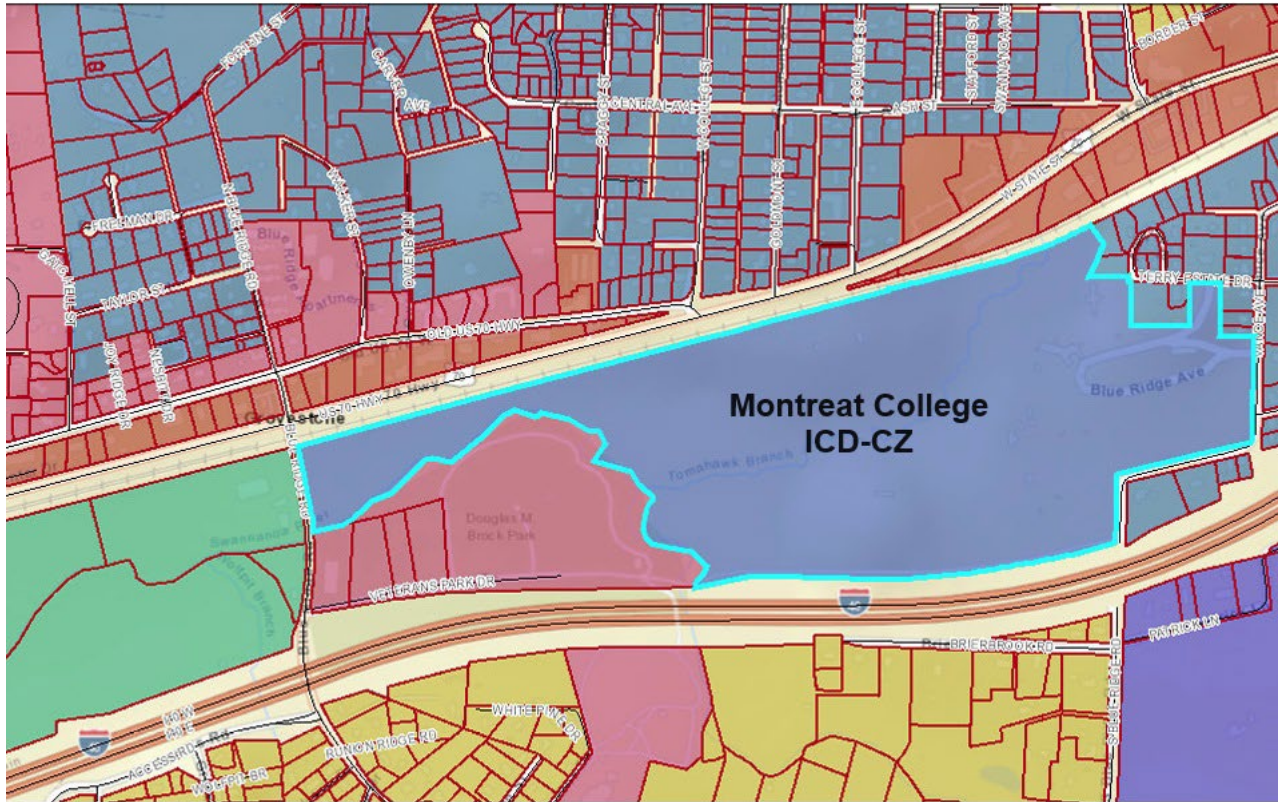
The Official Zoning Map be, and the same is hereby, amended as follows:

That parcel described and identified on the Buncombe County tax maps as PIN 0609-93-9480.00000, recorded in Deed Book 2429, Page 0668 and currently owned by Montreat College, be rezoned to institutional campus district conditional zone (ICD-CZ). A copy of the official zoning map showing said lot is attached hereto as Exhibit "A" and made a part thereof.

This ordinance shall be in full force and effective on the date of adoption.

READ, APPROVED AND ADOPTED, this the 13th day of May 2024.

Exhibit A



Project Name: Montreat College Black Mountain Campus
Project Number: Z-O-23-23
Project Description: Conditional Zoning Request
Applicant: Montreat College
Parcel ID Number: 0609-93-9480.00000
Location/Address: 191 Vance Avenue

7) CITIZEN COMMENTS- *none.*

8) UNFINISHED BUSINESS- *none.*

9) NEW BUSINESS

A. Consideration of Street Dedication for Rantis Lane and Fay Jones Lane, located off Jane Jacobs Road.

The Town Council has been petitioned to accept Rantis Ln. and Fay Jones Ln. as Town public streets. This would include accepting all maintenance of both streets to include

paving, snow removal, and any other general maintenance of these streets within the 20-foot right-of-way. Some discussion ensued among Council Members and Town Staff about public streets. ***Council Member Doug Hay made a motion to reject the Town taking over Rantis Ln. and Fay Jones Ln. A vote of 5-0 in favor.***

B. Approval of Resolution Authorizing the Town Manager to Execute Agreement for Design-Build Services for the Cragmont Park Renovation Project.

Project & Facilities Manager Angela Reece presented this item to the Town Council. Ms. Reece stated based on the Town's written criteria for use of the design-build delivery method, staff the conducted a qualifications-based selection process to solicit proposals using the design-build method for the Cragmont Park Renovation Project, pursuant to N.C. Gen. Stat. § 143-128.1A, to construct, repair, rehabilitate, or replace existing park infrastructure along two (2) adjoining parcels of land totaling 5.14 acres along Swannanoa Avenue. Based on the evaluations, Harper General Contractors Inc. (selected firm) was determined to be a responsive, responsible, and most qualified firm.

Council Member Alice Berry made a motion to adopt the following resolution selecting Harper General Contractors, Inc. (firm) as most responsible, responsive, and qualified firm and to authorizing the Town Manager to negotiate and execute a final contract for design-build services for the Cragmont Park Renovation Project pursuant to § 143-128.1A. A vote of 5-0 in favor.

**RESOLUTION BY THE TOWN OF BLACK MOUNTAIN TOWN COUNCIL
APPROVING DESIGN-BUILD FIRM SELECTION AND AUTHORIZING THE TOWN
MANAGER TO EXECUTE AGREEMENT FOR DESIGN- BUILD DELIVERY
SERVICES FOR THE CRAGMONT PARK RENOVATION PROJECT**

Resolution #R-24-22

WHEREAS, The State of North Carolina passed Session Law 2013-401 authorizing local governmental entities in North Carolina to utilize the design- build method for construction contracting pursuant N.C. Gen. Stat. § 143- 128.1A; and

WHEREAS, on January 8, 2024, the Town Council of the Town of Black Mountain passed Resolution R-24-03 to establish criteria to be utilized by the Town when considering the design-build delivery method for Town projects ("Town of Black Mountain Design-Build Criteria"); and

WHEREAS, on March 11, 2024, the Town Council of the Town of Black Mountain passed Resolution R-24-10 approving the use of the design-build delivery method for the Cragmont Park Renovation Project; and

WHEREAS, based upon the Town of Black Mountain Design-Build Criteria, the Town of Black Mountain conducted a qualifications-based selection process to solicit proposals using the design-build method for the Cragmont Park Renovation Project pursuant to N.C. Gen. Stat. §

143-128.1A, to construct, repair, rehabilitate, or replace existing park infrastructure along two (2) adjoining parcels of land totaling 5.14 acres along Swannanoa Avenue; and

WHEREAS, the Town received qualifications in accordance with said statute for the Cragmont Park Renovation Project; and

WHEREAS, based on the evaluations, **Harper General Contractors Inc.** (selected firm) is determined to be a responsive, responsible, and most qualified submitter; and

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Black Mountain, North Carolina that:

1. The Town of Black Mountain accepts the proposal from **Harper General Contractors Inc.** for professional design-build services for the Cragmont Park Renovation Project in an amount not to exceed \$492,000 and finds **Harper General Contractors Inc.** to be responsive, responsible, and the most qualified firm.
2. The Town Manager is authorized to negotiate and execute a final contract with **Harper General Contractors Inc.** (selected firm) to serve as design-builder for the Cragmont Park Renovation Project, in an amount not to exceed **\$492,000.00.**

READ APPROVED AND ADOPTED by the Town Council of the Town of Black Mountain, North Carolina, upon a motion by Council Member Berry on the 13th day of May 2024.

C. Discussion of Designated Parking Request at Lakeview Senior Center.

Council Member Alice Berry stated that several citizens from the Active Mobility Commission had spoken to Council about parking concerns at Lakeview Senior Center and were requesting parking spaces be designated for Senior Center use during the weekdays, especially during the summer months. Council Members and Town Staff had a short discussion, with a consensus being made to designate twelve (12) spaces for Senior Center from 10am-1pm Monday through Friday from Memorial Day through Labor Day. Town staff would erect signage reflecting this language in the parking area.

10) COMMUNICATION- *none.*

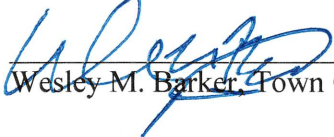
11) COMMUNICATION FROM MAYOR AND TOWN COUNCIL.

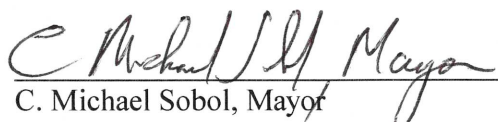
Council Member Alice Berry recognized and thanked all Town employees stating Public Service Week was held May 5-11, 2024. Vice Mayor Archie Pertiller read a Proclamation Recognizing Municipal Clerks Week, May 5-11, 2024, and recognized the Town's Clerk Wesley Barker.

12) CLOSED SESSION- *none.*

13) ADJOURNMENT- *With no further business to be discussed, Mayor C. Michael Sobol adjourned the meeting at 9:45 p.m.*

ATTEST:


Wesley M. Barker, Town Clerk


C. Michael Sobol, Mayor

MEMORANDUM

RE: MONTREAT COLLEGE CONDITIONAL ZONING CONDITIONS
(DRAFT) FOR PROPERTY LOCATED AT 191 VANCE AVE. (APPROX.
89 ACRES); PIN No. 060993948000000 (“Property”)
DATE: 05/13/2024

CAMPUS MASTER PLAN NOTES AND CONDITIONS

Plan Notes

- A. To assist Montreat College’s (“College”) nationally recognized cybersecurity training program, the North Carolina General Assembly appropriated \$30 million for the design and construction of a Cybersecurity 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.
- B. In Section 1.2.3 of the Land Use Code of the Town of Black Mountain (“Town”), the Town defines a master plan as “a comprehensive, long-range plan guiding the development of a tract of land or subdivision.” The hereinafter defined Master Plan satisfies the Town’s definition of master plan as a long-range plan guiding development of the Campus. The Master Plan depicts uses and improvements envisioned by the College at the Campus arising from the College’s master planning process which included an extensive review of its Montreat Campus and the Campus, both the advantages and opportunities of each campus as well as their specific constraints. The Town participated in the College’s master planning process.
- C. 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 Campus that many changes in higher education, technology, transportation, and skills needed for the 21st century will occur.
- D. These Plan Notes provide background and context relevant to understanding the Master Plan design. The Plan Notes are not rezoning conditions. The rezoning conditions for the Campus are stated below.

Rezoning Conditions

1. The Master Plan dated __ and entitled “MONTREAT COLLEGE: BLACK MOUNTAIN CAMPUS, Montreat, NC” (“Master Plan”) shows the Property on which the Campus will be developed and the Campus shall be developed and used in accordance with the Master Plan, including the conditions identified as Rezoning Conditions (“Rezoning Conditions”) as part of the Conditional Rezoning Ordinance No. O-23-22 (text) and Z-O-23-23 (map). As required by Section 1.5.5B.3, the Master Plan provides a full list of the proposed uses consistent in character with the Institutional Campus District in effect on August 28, 2023 (the “ICD”). All uses described on the Master Plan shall be generally permitted and allowed on the Campus as a matter of right in the locations shown on the Master Plan. The Campus will be developed in phases and completion of one phase is not necessary for the beginning of any development and construction of another phase except the Cybersecurity Facility (identified as one of the “Academic Buildings, number 1, on the Master Plan) shall be the building first constructed of the new buildings shown on the Master Plan. Phases and phase lines may be adjusted by the College as needed. Development of the Campus will be approved through Town land development approvals of subdivision plats or zoning site plans. The Campus may be subdivided, or lots recombined in compliance with the Town’s Land Use Code in effect on August 28, 2023, but lots on the Campus shall be exempt from any internal separation or other dimensional standards when adjacent to existing lot lines within the Campus.
2. Except as shown on the Master Plan or identified in the Rezoning Conditions, the standards of ICD shall remain in effect unless one or more different standards are consented to by the College in writing signed by the College. Should any unambiguous and irreconcilable conflict between the Master Plan and ICD arise, the Master Plan shall control. Should any unambiguous and irreconcilable conflict between the Master Plan and the Rezoning Conditions arise, the Rezoning Conditions shall control.
3. Any proposed change to the Master Plan shall be governed by Section 4.7.12.4G of the ICD in effect on August 28, 2023, which is entitled, “Changes to the master plan”. Section 4.7.12.4G shall be interpreted to mean that any change which **(1)** substantially affects existing traffic circulation, drainage, relationship of buildings to each other, landscaping, buffering or outdoor lighting or **(2)** significantly impacts existing infrastructure or town services (i.e., street capacity, water and sewer capacity, police and fire protection, or other service related town functions) or any change that may result in an adverse impact on neighboring properties and residents (collectively **(1)** and

(2) above are “Substantial Change”) requires the College to submit a new master plan to the Town for approval. However, notwithstanding Section 4.7.12.4G items 1-5, the following will not be considered a Substantial Change triggering an amendment to the Master Plan and conditional zoning: (A) any change of location of the buildings or relocation of a building, all of which are the buildings shown on the Master Plan of no more than 200 feet as depicted on the Master Plan; or (B) addition or relocation of accessory structures, parking lots or areas, addition or relocation of parking or outdoor storage for service vehicles or equipment, relocation of any major recreation development (i.e., ball fields, tennis courts,), relocation of a private street connecting with the public street system are minor modifications that may be approved by Town staff administratively. Notwithstanding the above and subject to existing conditions and structures, the layout of internal streets shown on the Master plan, and bicycle and pedestrian access, stormwater management and signage approved by the Town, no relocation shall violate or negatively impact the 100’ Institutional Zoning Buffer or other buffer requirements identified in paragraph 16 below or the access standards in paragraph 4 below.

4. The College shall develop and maintain a principal and secondary access to and from the Campus as depicted on the Master Plan. As shown on the Master Plan, the primary access to the Campus will be from Blue Ridge Road. The Blue Ridge Road entrance will be traffic-ready and opened to College traffic prior to the issuance of a building permit for vertical construction of the Cybersecurity Facility, which building shall be the first one constructed of the new buildings shown on the Master Plan. For all construction-related work on the Campus, vehicles will always use Blue Ridge Road for construction traffic or construction vehicles and equipment. 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. Upon completion of the primary access road as noted above, the secondary access points from Vance Avenue and Terry Estates Drive (both being public streets) shown on the Master Plan will be limited to secondary access for official College vehicles (maintenance vehicles and student shuttles of no more than fifteen (15) passenger seats) driven by licensed and approved drivers for College purposes only, and emergency fire and police. All secondary access points will either be gated or have knockdown barricades that are installed within the buffer identified in Rezoning Condition sixteen (16) near the property line of the Campus prior to issuance of the building permit for vertical construction of the Cybersecurity Facility. Additionally, the College will install and maintain restrictive signage within the buffer identified in Rezoning Condition sixteen (16) near the property line of the Campus denoting the limits of vehicular use on Vance Avenue and Terry Estates Drive. Bicycle and pedestrian facilities

shall be included at the time the residence halls are constructed and the facilities shall not be required to follow the path of new private streets.

5. 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 the Town regulated stream buffer or stormwater management area. Generally, Campus private streets will be paved at a minimum width of twenty (20) feet. On-street parking is not contemplated within the Master Plan but if it is added, it will meet all Town requirements in effect on August 28, 2023. Notwithstanding, all streets, parking lots or other access ways on the Campus shall meet Fire Code requirements of State law in effect on August 28, 2023, and the Town Code of Ordinances in effect on August 28, 2023, unless agreed to in writing signed by the College. Access Point 9 from U.S. Highway 70 as shown on the Master Plan may be developed by the College in its sole discretion.
6. 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 Town's Land Use Code in effect on August 28, 2023. Adjustments may be necessary to accommodate actual stormwater treatment requirements, natural site discharge points and private streets of the Campus; provided, however, the College shall comply with the Town's post-construction stormwater ordinance in effect on August 28, 2023.
7. 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 in effect on August 28, 2023. The greenways depicted on the Master Plan shall be open to the public from the daylight hours of dawn to dusk once completed with appropriate security, such as gates and protective features, to protect the Campus during the hours after dusk and before dawn.
8. The intention is to preserve and renovate the Manor House, subject to renovation, maintenance, and operating costs, the availability of financial resources, and future ownership. The Manor House, originally known as "intheoaks" and also known as "In the Oaks," is a 24,400 square foot, 67 room English Tudor styled mansion built in the 1920s containing a large formal hall,

large kitchen, gymnasium, guest bedrooms, meeting areas and a classroom. In addition to established prior uses, the Manor House may be used for all uses set forth in Section 4.7.12.2A. and all of the special uses set forth in Section 4.7.12.2B of the Town's Land Use Code in effect on August 28, 2023, as a matter of right except as parking decks, stadium or coliseum, which shall be special uses. Nothing herein shall waive or modify the College's right to any lawfully existing uses or nonconforming uses of the Manor House.

9. 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 under Section 2.1.4 of the Town's Land Use Code in effect on August 28, 2023.
10. 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 that will be provided to avoid a sterile, unarticulated blank treatment of such walls. Solid waste containers (at the cost of the College) shall be located to the rear or side of such buildings and appropriately screened from streets.
11. 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, resident halls (maximum of 4) on the Campus shall not exceed four (4) stories at a maximum height of sixty-five (65) feet, and the gymnasium building and the two academic buildings, one of which is the Cybersecurity Facility shall not exceed fifty-five (55) feet maximum height. All other buildings depicted on the Master Plan shall not exceed the height regulations of the ICD. Height measurements are to be performed in accordance with Section 4.5.2 the Town's Land Use Code in effect on August 28, 2023, with any rooftop mechanical equipment to be screened from ground level view.
12. Signage, as allowed by the Town's Land Use Code in effect on August 28, 2023, may be provided.
13. 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.

14. 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.
15. 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 (customary, incidental and subordinate) to the College, or the any of the uses permitted in the ICD in effect on August 28, 2023, 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 customary, 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.
16. Subject to existing conditions and structures and the layout of internal private streets as shown on the Master Plan, where the Campus adjoins existing residential development, the buffer shown on the Master plan shall be maintained of a minimum of 100 feet and include screening by existing or enhanced landscaping, natural vegetation, landscaped berm, topography, fence or wall. Bicycle and pedestrian access, stormwater management, and signage, all as approved by the Town, may be located within the buffer.
17. Except as provided on the Master plan or these Rezoning Conditions, the College shall comply with all other applicable ordinances or regulations within the Town's Code of Ordinances, including Appendix A Land Use Code, that are in effect as of August 28, 2023, unless otherwise agreed to by the Town and College or as otherwise provided in N.C.G.S. § 160D-108(c) or (d). This includes, but is not limited to, the Town's storm water ordinance regulations, the Town's Flood Damage Prevention Ordinance and the Town's Fire Code.
18. Recognizing the Master Plan is a long-range plan guiding and controlling development of the Campus, the Town and College may in the future negotiate and agree on a development agreement in accordance with the requirements of the North Carolina General Statutes. In the event the Town approves a development agreement with the College, the College will have a vested right to complete the Campus for the period specified in the development agreement. Should the parties not enter into a development agreement, the Master Plan including the Rezoning Conditions is a site-specific vesting plan and multi-phase development of at least 25 acres under Section 1.9.1 of the Town's Land Use Code in effect on August 28, 2023. Pursuant to Section 1.9.1F, the Master

Plan vests a right to complete the Campus pursuant to the Town's ordinances in effect on August 28, 2023 for no less than five (5) years from approval of the Master Plan by the Town or no less than seven (7) years from the date the site plan for the initial phase of the development is approved by the planning board, whichever is longer (the "Vesting Period") and the College, if necessary, may seek extension of development permits or approvals as provided under Section 1.9.1H. Provided, however, nothing herein shall restrict or limit vesting protections afforded incomplete developments or nonconforming uses in N.C.G.S. §160D-108 or under common law. The vesting rights provided by the Town's Land Use Code in effect on August 28, 2023, are in addition to common law vesting, statutory vesting and permit choice statutes adopted by the North Carolina General Assembly, including without limitation Article 10 of Chapter 160D of the North Carolina General Statutes authorizing formation of development agreements. To the extent vesting rights provided by the Town's Land Use Code, in effect on August 28, 2023, are different than vesting and permit choice rights under North Carolina law, the law that provides the longer vesting right shall apply.