

**Town of Montreat
Planning and Zoning Commission
Meeting Agenda
January 2, 2020 – 10:30 a.m.
Walkup Building**

I. Call to Order

- Welcome
- Moment of Silence/Invocation

II. Agenda Adoption

III. Minute Adoption

- A. December 19, 2019 Meeting Minutes

IV. Old Business

- -----.

V. New Business

- A. New Ordinance Sections

1. Report: Septic Tank / Sewer & Related Issues
2. Draft: Article III – Administrative Provisions
3. Draft: Planned Unit Development District
4. Discussion: Accessory Dwelling Units

VI. Public Comment

IX. Adjournment

**Town of Montreat
Planning and Zoning Commission
Meeting Minutes
December 19, 2019 – 10:30 a.m.
Walkup Building**

Board members present: Bill Scheu
Allen Crawford
Sally Stancil
Mason Blake
Wade Burns
Dan Dean
Bill Roberts
David Holcomb

Board members absent: Sally Stancil

Town staff present: Angie Murphy, Town Clerk
Alex Carmichael, Town Administrator
Stuart Bass, Regional Planner, Land-of-Sky Regional Council

Three members of the public were present. Mr. Scheu called the meeting to order at 10:32 a.m., and led the group in a moment of silence.

Agenda Approval

Mr. Dean moved to adopt the agenda as presented. Mr. Blake seconded and the motion carried 7/0.

Meeting Minutes Adoption

Mr. Blake moved to approve the minutes as amended. Mr. Blake seconded and the motion carried 7/0.

Old Business

- A. Zoning Ordinance Revisions: There was continued discussion about air b&b's and short term rentals. Mr. Roberts was in agreement with the rest of the Commission to move forward with no changes. Mr. Carmichael explained how nuisance calls and noise ordinance questions are handled by the Montreat Police Department. Mr. Burns spoke to the topic of garage/studio apartments and how they have a long history in Montreat but current zoning does not allow for them. Mr. Scheu asked Mr. Bass to research the prohibitions on secondary domiciles.

The discussion of definitions continued from the last meeting. Under the topic of “Special Use Permits” Mr. Roberts suggested a legal notice being placed at the Montreat Gate to allow for more residents to be made aware of special meetings. Mr. Holcomb suggested a five line/reader sign rather than paper signs which are not visually appealing. Mr. Carmichael gave some insight on the Town’s legal noticing efforts. The “subdivision” definition as it stands is by state statute. The definition of “subdivision” was shortened to “all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions of land involving the dedication of a new street or a change in existing streets.” The remaining portion of the current definition will be addressed in the subdivision ordinance. It was decided to add “antenna” to the definition of support. The Commission removed “use by right” from the definitions. There was a small typographical error in the definition of “variance”. Visual aid was removed from the definition of “visible”.

New Business

- A. Conditional Zoning District: Mr. Bass explained the definition of Conditional Zoning Districts. There was a lengthy discussion about Conditional Zoning Districts. The Commission worked on grammatical changes.

The next meeting will be held on January 2nd.

Adjournment

Mr. Roberts moved to adjourn the meeting. Mr. Crawford seconded and the motion carried 7/0. The meeting was adjourned at 12:05 p.m.

Bill Scheu, Chair

Angie Murphy, Town Clerk

**Planning and Zoning Commission
Meeting Minutes
December 19, 2019**

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011**

**SESSION LAW 2011-255
SENATE BILL 676**

**AN ACT TO CLARIFY LANDOWNERS' RIGHTS OVER WATER ON THEIR PROPERTY
AND THE CONSTRUCTION OF WELLS ON THEIR PROPERTY.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 87-97(a) reads as rewritten:

"(a) **Mandatory Local Well Programs.** – Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements set out in this Article and rules adopted pursuant to this Article. No person shall unduly delay or refuse to permit a well that can be constructed or repaired and operated in compliance with the requirements set out in this Article and rules adopted pursuant to this Article."

SECTION 2. G.S. 87-97(e) reads as rewritten:

"(e) **Issuance of Permit.** – The local health department shall issue a construction permit or repair permit if it determines that a private drinking water well can be constructed or repaired and operated in compliance with this Article and rules adopted pursuant to this Article. The local health department may impose any conditions on the issuance of a construction permit or repair permit that it determines to be necessary to ensure compliance with this Article and rules adopted pursuant to this Article. Notwithstanding any other provision of law, no permit for a well that is in compliance with this Article and the rules adopted pursuant to this Article shall be denied on the basis of a local government policy that discourages or prohibits the drilling of new wells."

SECTION 3. G.S. 87-88(k) reads as rewritten:

"(k) **Abandonment of Wells.** –

- (1) **Temporary Abandonment:** When any well is temporarily removed from service, the top of the well shall be sealed with a water-tight cap or seal.
- (2) **Permanent Abandonment:** Any well that is to be permanently abandoned shall be filled, plugged, or sealed in such a manner as to prevent the well from being a channel allowing the vertical movement of water and a source of contamination of the groundwater supply.
- (3) **Abandonment of Water Supply Wells for Other Use:** Any water supply well that is removed from service as a potable water supply source may be used for other purposes, including, but not limited to, irrigation, commercial use, or industrial use, and such well is not subject to either subdivision (1) or (2) of this subsection during its use for other purposes. For purposes of this subsection only, "water supply well" includes wells constructed by an individual on land which is owned or leased by the individual, appurtenant to a single-family dwelling, and intended for domestic use (including nonpotable household purposes, farm livestock, or gardens)."

SECTION 4. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 16th day of June,
2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 1:46 p.m. this 23rd day of June, 2011

SECTION 2 USE OF PUBLIC SEWERS REQUIRED

Section 2.01 Discharge of Untreated Wastewater Prohibited

Within the boundaries of the District, it shall be unlawful for any person to discharge to any outlet, other than a sanitary sewer or approved septic system, any domestic or industrial waste except where suitable treatment has been provided in accordance with provisions of this Ordinance or where an appropriate NPDES Permit has been obtained.

Section 2.02 Use of Sanitary Sewers

The owner(s) of all houses, buildings or properties situated within the District and abutting on any street, alley or right-of-way in which there is now located or may in the future be located abutting said property a sanitary sewer of the District is hereby required at the owner(s)' expense to connect such facilities directly with the sanitary sewer in accordance with provisions of this Ordinance within ninety (90) days after being directed to do so by MSD provided that said sanitary sewer abuts the property; and the connection of such facilities is maintained in accordance with the provisions of this Ordinance. The owner is not required to connect such facilities directly with the sanitary sewer if:

- 2.02.01 The house, building or property in which the toilet or other facilities necessary for the discharge of Domestic or Industrial Waste is farther than 300 feet from the sanitary sewer, or;
- 2.02.02 Connection is technically unfeasible. Technical feasibility shall be determined by MSD, or;
- 2.02.03 An existing, properly functioning septic tank system located on the property is being used by the owner to properly treat waste. This exclusion shall not be available if, in order to obtain or keep valid Health Department approval, it becomes necessary to install a new septic tank or field or perform major repair to the existing tank or field in order to maintain a properly functioning system.

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(Moved from 600.)

300 General. The regulations set forth in this Ordinance shall be applicable to all Zoning Districts, shall be minimum regulations, and shall apply uniformly to each class or kind of Structure or land, except as may be provided for elsewhere in this Ordinance.

301 Administration of this Ordinance. The Zoning Administrator appointed by the Town of Montreat Board of Commissioners is duly charged with the administration of the provisions of this Ordinance. All questions arising in connection with this Ordinance shall be presented first to the Zoning ~~Official~~ Administrator who shall be responsible for the day to day administration of this Ordinance.

302 Certificate of Zoning Compliance Required. No Building or other Structure shall be erected, moved, added to or structurally altered, nor shall any new parking spaces or parking lots be added, nor shall any Building Permit be issued nor shall any change in the use of any Building, Structure or land be made until a Certificate of Zoning Compliance shall have been issued by the Zoning ~~Official~~ Administrator. No certification of zoning compliance shall be issued except in conformity with the provisions of this Ordinance. Replacement of roof shingles does not require Zoning Compliance. Where a variance or Conditional Use Permit is required, the Zoning ~~Official~~ Administrator shall not issue a Certificate of Zoning Compliance until such variance or permit shall be approved by the Board of Adjustment. A copy of all Certificates of Zoning Compliance shall be kept in the Town office.

302.1 Applications for Zoning Compliance Certificate. All applications for zoning compliance certificates shall be accompanied by plans in duplicate and drawn to scale showing:

- 1) the actual dimensions of the lot to be built upon;
- 2) accurate dimensions and the use of the proposed Building or Structure;
- 3) the location on the lot of the Building or Structure proposed to be erected or altered, including an outline of all proposed Structures and the distances from all Structures to adjoining property lines;
- 4) the location of all underground and above ground utilities;
- 5) all utility easements, rights-of-way, culverts and drainage ways;
- 6) the parcel identification number consistent with Buncombe County tax records;
- 7) evidence that taxes on the property proposed for construction were paid prior to submitting the application;
- 8) such other information as may be necessary to provide for the enforcement of the provisions of this Ordinance, including the

architectural or Building plans of the Structure proposed to be erected or altered; and

9) Deed

Prior to issuance of a Certificate of Zoning Compliance, the **Zoning Administrator** may consult with qualified personnel for assistance to determine if the application meets the requirements of this Ordinance.

302.2 Zoning Compliance Certificate Fee. All applications for a Certificate of Zoning Compliance shall be accompanied by an application fee based upon the number of principal Structures per application. The fee shall set forth in the Town of Montreat Fee Schedule.

302.3 Certificate of Zoning Compliance Limited to Six Months Plus One Extension. If within six (6) months of the date on which a Certificate of Zoning Compliance is issued, construction has not begun on the structure for which the certificate had been issued, the certificate shall expire; but the Zoning Administrator shall grant one (1) extension of six (6) months to the certificate if so requested by the applicant. Such request shall be granted without any requirement of any additional fee.

302.4 Prior Approval Required for Plan Changes. Any changes to a development proposal in the Town, for which a Certificate of Zoning Compliance has been issued, voids the Certificate of Zoning Compliance for the proposal. A new application consistent with Section 602.1 shall be submitted to the Town Zoning **Administrator** describing the project including all proposed changes. No construction shall take place that is inconsistent with the approved plans until amended plans are fully approved by the Zoning **Administrator**.

302.5 Re-submission of Application for Zoning Compliance. An application that has been denied by the Zoning Administrator but not appealed to the Board of Adjustment may be re-submitted not more than once, unless there is a material change in the application or a change in the zoning ordinances related to the application.

303 Building and Occupancy Permits Required.

303.1 Building Permit Required. Upon receiving a Certificate of Zoning Compliance, the property owner shall obtain a Building Permit from the Town of Montreat Building Inspector for the construction or structural alteration of any Building or Structure. A permit fee, as set by the Town Commissioners shall be paid to the Town.

303.2 Building Permit Expiration. A Building permit shall expire six (6) months from the date it was issued if the work authorized by the Building Permit has not been commenced. In addition, a Building Permit shall immediately expire if the work authorized by the Building Permit has been commenced but has been discontinued for a period of twelve (12) months.

- 303.3 Certificate of Occupancy Required. No new Building or part thereof shall be occupied, and no additional or enlargement of any existing Building shall be occupied, and no existing Building after being altered or moved shall be occupied, and no change of occupancy shall be made in any existing Building or part thereof, until the Building Inspector has issued a Certificate of Occupancy therefor. A temporary Certificate of Occupancy may be issued for a portion or portions of a Building which may safely be occupied prior to final completion and occupancy of the entire Building. Application for a Certificate of Occupancy may be made by the owner or his/her agent after all final inspections have been made for new Buildings, or, in the case of existing Buildings after supplying the information and data necessary to determine compliance with this chapter, the appropriate regulatory codes and the Zoning Ordinance for the occupancy intended. The Building Inspector shall issue a Certificate of Occupancy when, after examination and inspection, it is found that the Building in all respects conforms to the provisions of this chapter, the regulatory codes, and the Zoning Ordinance for the occupancy intended.
- 303.4 Certificate of Compliance. At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection and if he or she finds that the completed work complies with all State and local laws and with the terms of the permit, he or she shall issue Certificate of Compliance. No new Building or part thereof may be occupied, and no addition or enlargement of an existing Building may be occupied, and no existing Building that has been altered or moved may be occupied until the inspection department has issued a Certificate of Compliance. A temporary Certificate of Compliance may be issued permitting occupancy for a stated period of specified portions of the Building that the inspector finds may safely be occupied prior to final completion of the entire Building. Violations of this section shall constitute a Class 1 misdemeanor. The Building Inspector shall issue a Certificate of Occupancy when, after examination and inspection, it is found that the Building in all respects conforms to the provisions of this chapter, the regulatory codes, and the Zoning Ordinance for the occupancy intended.
- 304 Compliance. In case any Building is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any Building or land is used in violation of this Ordinance, the Zoning Administrator or any other appropriate Town authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation.
- 305 Appeal from the Zoning Administrator. All questions arising in connection with this Ordinance shall be presented first to the Zoning Administrator, and such questions shall be presented to the Board of Adjustment only as an appeal from a ruling of the Zoning Administrator. Any order, requirement, decision or determination made by the Zoning

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Administrator shall be recorded in writing and may be appealed to the Board of Adjustment pursuant to the procedure found in **Article XII** of this Ordinance.

305.1 Notice of Violations and Citation Procedures.

- A) Notice Required Before Penalty. No penalty shall be assessed unless and until the person alleged to be in violation has been notified of the violation in accordance with this section.
- B) Notice of Violation; Opportunity to Cure. Whenever any Town official charged with the duty of enforcing regulations in this Ordinance has reasonable cause to believe that a person is violating any of the provisions of this Ordinance or any plan, order, or condition issued pursuant to this ordinance, that official shall immediately notify that person of the violation. Such notice of violation shall be in the form of a verbal warning and the maximum time to correct clearly stated. If the violation is not corrected within the specified timeframe, a written Notice of Violation (NOV) shall be served by personal delivery or by certified or registered mail, return receipt requested. In addition, service hereunder may be made in accordance with **Rule 4 of the North Carolina Rules of Civil Procedure**. If the violator cannot be ascertained, then the notice of violation shall be sent to the record owner of the land on which the violation occurs. The notice of violation shall include an opportunity to cure the violation within a prescribed period of time.
- C) Citation for Violation. Any person, who after being given a notice of violation pursuant to section 601.1(B) above, and who continues such violation, shall be subject to the enforcement remedies set forth **in Article XIV**.
- D) Action for Recovery of Civil Penalty. If payment is not made, or the violation(s) are not cured or corrected, within the time specified in the citation, then. Recovery of civil penalties and other remedies are available to the Town for enforcement of the provisions of this section as contained in **Article XIV** of this Ordinance.

306 Responsibility for Violations. The owner of the property on which the violation occurs, any tenant or occupant of the property, any person who acts pursuant to a private agreement or public document, or any person who has control over or responsibility for, the use, development or redevelopment of the property or any structure located on the property shall be responsible for violations of this Ordinance.

No court conviction shall prevent the Town from taking such other lawful action as is necessary to prevent or remedy any violation.

307 Penalties for Violation. Any person violating any provision of this Ordinance shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine not to exceed

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five hundred dollars (\$500.00) as provided by N.C.G.S. § 14-4 or imprisonment as provided by N.C.G.S. § 15A-1340.23 or other applicable law and in addition thereto such violation may be enjoined and restrained as provided in N.C.G.S. § 160A-175.

307.1 Remedies and Penalties. The remedies and penalties provided for violations of this Ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order and can include:

A) Civil Penalty. Violations of this Ordinance shall subject the offender to a civil penalty upon the issuance of a citation for a violation. The Town may recover the civil penalty, if not paid to the Town Administrator within thirty (30) days of the date the citation was issued, in a civil action in the nature of a debt pursuant to N.C.G.S. § 160A-175. Each day that any violation of the provisions of this Code continues shall constitute a separate and distinct offense. The civil penalty shall be fifty dollars (\$50.00) for each violation unless otherwise provided in this Ordinance or set forth below: **For purposes of determining the amount of the civil penalty pursuant to this Section, the failure to pay the fifty-dollar (\$50) civil penalty shall not constitute a separate and distinct offense that subjects the offender to an additional fifty-dollar (\$50) civil penalty.**

Civil Penalty for Violations of the Zoning Ordinance of the Town of Montreat:

<u>First violation:</u>	<u>Verbal Warning</u>
Second violation:	Written Notice of Violation & \$50.00 if not corrected within 7 days
Third violation:	\$250.00
Fourth and subsequent violations:	\$500.00

Second or subsequent violations of the provisions of this Ordinance by the same person for the same activity occurring within one year of the first such violation shall be subject to the higher penalties set forth above.

B) Withholding of Certificate of Occupancy: The Zoning Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building constructed or being constructed on the property until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

C) Disapproval of Subsequent Permits and Development Approvals: As long as a violation of this Ordinance continues and remains uncorrected, the Zoning Administrator or other authorized agent may withhold, and the Town Planning and Zoning Commission or Board of Adjustment may disapprove, any request for permit or development approval or authorization provided for by this Ordinance for the property on which the violation occurs.

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D) Injunction and Order of Abatement: The Zoning Administrator, with the written authorization of the Town Administrator, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this Ordinance. Any person violating this Ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

E) Abatement of Public Health Nuisance: If the violation is dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Zoning Administrator, with the written authorization of the Town Administrator, may remove, abate or remedy the violation and the costs, if not paid, shall be a lien against the property in accordance with G.S. § 160A-143.

307.2 Procedures.

A) Violations. Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint in accordance with the procedures established in the Town of Montreat Code.

B) Extension of Time. A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Zoning Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Zoning Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, but such extension shall not exceed thirty (30) days.

The Zoning Administrator may grant extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this Ordinance.

The Zoning Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

C) Enforcement After Time to Correct. After the time has expired to correct a violation, including any extension(s) if authorized by the Zoning Administrator, the Zoning Administrator shall determine if the violation is corrected. If the violation is not corrected, the Zoning Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

D) Emergency Enforcement. If delay in correcting a violation would seriously threaten the effective enforcement of this Ordinance or pose an immediate danger to the public health, safety, or welfare, then the Zoning Administrator may order the

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immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Zoning Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this Article.

No court conviction shall prevent the Town from taking such other lawful action as is necessary to prevent or remedy any violation.

- E) Stop Orders. Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law or in violation of [a] provision(s) of the Zoning Ordinance, or in a manner that endangers life or property, the Building Inspector may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped in accordance with North Carolina G.S. § 160A-421.
- 1) The stop order shall be in writing, directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefor, and the conditions under which the work may be resumed.
 - 2) The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance or his/her designee within a period of five days after the order is issued. Notice of appeal shall be given in writing to the Commissioner of Insurance or his/her designee, with a copy to the local inspector. The Commissioner of Insurance or his/her designee will promptly conduct an investigation and the appellant and the inspector will be permitted to submit relevant evidence. The Commissioner of Insurance or his/her designee will as expeditiously as possible provide a written statement of the decision setting forth the facts found, the decision reached, and the reasons for the decision. Pending the ruling by the Commissioner of Insurance or his/her designee on an appeal no further work shall take place in violation of a stop order. In the event of dissatisfaction with the decision, the person affected shall have the options of:
 - a) Appealing to the Building Code Council, or
 - b) Appealing to the Superior Court as provided in G.S. 143-141.
 - 3) The owner or builder may appeal from a stop order involving alleged violation of this Zoning Ordinance by giving notice of appeal in writing to the Board of Adjustment. The appeal shall be heard and decided within the period established by Article XII. No further work shall take place in violation of a stop order pending a ruling.
 - 4) Violation of a stop order shall constitute a Class 1 misdemeanor.
- F) Notice of Violation. Whenever provisions of this Ordinance have been violated by a responsible party as described in Section 1401, a verbal warning shall be issued the party or parties in violation of this Ordinance and the maximum time

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to correct clearly stated. If the violation is not corrected within the given timeframe, a written Notice of Violation (NOV) shall be issued to the responsible party or parties providing seven (7) calendar days to bring the property/condition into compliance or a corresponding civil penalty of \$50.00 will be levied for each offense. The issuance of a written NOV shall be considered a second offense. Subsequent violations of the provisions of this Ordinance that involve the same property and person(s) within one (1) year will be subject to increased civil penalties as outlined in Section 1402.1 (A).

PLANNING AND ZONING COMMISSION

- 308 Establishment of the Planning and Zoning Commission. The Planning and Zoning Commission shall be composed of seven members for matters within the Town of Montreat and for extraterritorial matters. The seven-member Planning Commission shall be composed of five members residing in the Town of Montreat, one member residing in Buncombe County, and one residing in McDowell County. Two alternate members shall reside in the Town of Montreat. Members shall serve a term of three years. No member shall serve more than two consecutive terms. When a vacancy occurs on the Board for the member representing Buncombe or McDowell County, the Town shall notify the respective Board of County Commissioners and request an appointment within 90 days. If no appointment is made during that period the Town Board of Commissioners shall fill the vacancy. All appointments to the Planning Commission shall comply with the requirements of N.C.G.S. § 160A-362.
- 309 Proceedings of the Planning and Zoning Commission. The Planning and Zoning Commission shall elect from the members a chair and a vice-chair who shall serve for one (1) year or until reelected or until a successor is elected. The Planning Commission shall appoint a secretary who may be a municipal officer, an employee of the Town, or a member of the Planning and Zoning Commission. The Planning Commission shall adopt rules for transaction of its business and shall keep records of its resolutions and discussions, findings and recommendations. Such records shall be public records and filed in the Town office. Meetings of the Planning Commission shall be held quarterly, at the call of the chair, and at other times as the Planning Commission may determine. There shall be a quorum of four (4) members for the purpose of taking an official action required by this Ordinance. The alternate member may vote in the absence of a regular member but his/her presence shall not be counted when establishing a quorum. All meetings of the Planning Commission shall be open to the public.
- 310 Powers and Duties of the Planning and Zoning Commission. In addition to its powers and duties under the Subdivision Ordinance, it shall be the duty of the Planning Commission:

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- A. To acquire and maintain, in current form, such basic information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in those conditions;
- B. To prepare, and from time to time, amend and revise a comprehensive plan for the physical development of the Town;
- C. To establish principles and policies for guiding action in the development of the area;
- D. To prepare and recommend to the Town Board of Commissioners Ordinances promoting orderly development along the lines indicated in the comprehensive plan;
- E. To receive, review and make recommendations upon those applications for permits for Conditional Use Permits as required by the provisions of this Ordinance;
- F. To receive and review all applications for amendment to this Zoning Ordinance and to make recommendations thereon to the Town Board of Commissioners;
- G. To keep the Town Board of Commissioners and the general public informed and advised as to these matters;
- H. To serve as the Stormwater Advisory Committee and assist the Town Board of Commissioners in meeting the mission and achieving the identified goals and objectives of the Town's Stormwater Management Program; and
- I. To perform any other duties to which it may be lawfully assigned.

ZONING BOARD OF ADJUSTMENT

- 311 The Board of Adjustment shall have the authority to rule on matters of interpretation of this Ordinance, consider appeals from decisions of the Zoning ~~Official~~ **Administrator**, issue Conditional Use Permits, grant variances and perform other duties as defined in **Article XII** of this Ordinance. Any appeal from a decision of the Board of Adjustment shall be to the courts as provided by law. **(Moved)**.
- 312 Establishment of the Zoning Board of Adjustment. The Zoning Board of Adjustment shall be composed of seven members for matters within the Town of Montreat and for extra-territorial jurisdiction matters. The seven member Board of Adjustment shall be comprised of five members residing in the Town of Montreat, one member residing in Buncombe County, and one residing in McDowell County. The five member Board of Adjustment shall be composed of five members residing in the Town of Montreat. Two alternate members shall reside in the Town of Montreat. When a vacancy occurs on the Board for the member representing Buncombe or McDowell County, the Town shall notify

the respective Board of County Commissioners and request an appointment within 90 days. If no appointment is made during that period the Town Board of Commissioners shall fill the vacancy. All appointments to the Board of Adjustment shall comply with the requirements of N.C.G.S. § 160A-362 and 160A-388.

- 313 Proceedings of the Zoning Board of Adjustment. The Zoning Board of Adjustment shall elect a chair and a vice-chair from its members who shall serve for one (1) year or until reelected or until their successors are elected. The Board of Adjustment shall appoint a secretary. The Board of Adjustment shall adopt bylaws and rules in accordance with the provisions of this Ordinance and N.C.G.S. §160A-388. Meetings of the Board of Adjustment shall be held at the call of the chair and at other such times as the Board may determine. The chair, the vice-chair, or the clerk to the Board may administer oaths according to the procedures adopted in the Board's bylaws and rules. All meetings of the Board of Adjustment shall be open to the public.
- 314 Appeal from the Decision of the Zoning Administrator. All questions arising in connection with the enforcement of the Ordinance shall be presented first to the Zoning Administrator and such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator (See also Section 1203 D). A decision of the Zoning Administrator, as used in this section, refers to any final binding order, requirement, or determination made with respect to application of the Montreat Zoning Ordinance. Landowners may provide constructive notice of a final, binding determination by posting a sign on the affected site for 10 days in accordance with G.S 160A-388(b1)(4).
- 315 Powers and Duties of the Zoning Board of Adjustment. The Zoning Board of Adjustment shall have the following powers and duties:
- A. Appeals. The Board of Adjustment shall hear and decide appeals from decisions of the Zoning Administrator concerning enforcement of this Ordinance and appeals arising out of any other ordinance that regulates land use or development, in accordance with the following:
1. Any person who has standing under G.S. 160A-393(d) or the Town may appeal a decision to the Board of Adjustment by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.
 2. The Zoning Administrator (or other Town official who made the decision) shall give written notice of the decision to the owner of the property that is the subject of the decision and to the party who sought the decision (if different from the owner). The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

3. The owner or other party shall have thirty days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have thirty days from receipt of actual or constructive notice of the decision within which to file an appeal.
4. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from, unless the Zoning Administrator certifies to the Board, after notice of appeal shall have been filed, that by reason of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the Zoning Administrator a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.
5. Subject to the provisions of subdivision (3) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.
6. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.
7. When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).
8. The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution in accordance with standards and procedures established and approved by the Board.

In exercising the above powers, the Board of Adjustment may, in conformity with the provisions of G.S. 160A-388, reverse or affirm wholly or in part, or may modify the decision appealed from and shall make any order, requirements, decision or determination and to that end, shall have all of the powers of the Zoning Administrator.

- B. Variance. When unnecessary hardships would result from carrying out the strict letter of this Ordinance, the Board of Adjustment shall grant a variance upon showing of all the following:
1. Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 4. The variance is consistent with the spirit, purpose and intent of the Ordinance such that public safety is secured and substantial justice is achieved.
 5. The variance requested is the minimum variance that will make possible the legal use of the land, Building or Structure.
 6. The variance is not a request to permit a use of land, Building or Structure which is not permitted in the Zoning District involved.

The existence of a non-conforming use of neighboring land, Building or Structures in the same Zoning District or of permitted or non-conforming use in other Zoning Districts shall not constitute a reason for granting the requested variance. In granting a variance, the Board of Adjustment shall make written findings that all of the requirements listed above in 1203 (B) have been met. If a variance is granted it shall be the least possible deviation from the requirements of this subchapter. In granting any variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Article. Violations of the provisions of the variance granted, including any conditions or safeguards, which are a part of the grant of the variance, shall be deemed a violation of this Ordinance. The Board of Adjustment may hear appeals to grant a variance arising out of any other ordinance that regulates land use or development. The ordinance(s) shall also provide consistent, clearly-defined standards to establish findings through the variance process as outlined in this section.

- C. ~~Conditional~~ Special Use Permits. It shall be the duty of the Board of Adjustment to hear requests for Conditional Use Permits upon recommendation

from the Planning and Zoning Commission and grant said permits in accordance with the guidelines set forth by this Ordinance (See Article VIII).

- D. Subpoenas. The Board of Adjustment may subpoena witnesses and compel the production of evidence through the chair or acting chair. To request issuance of a subpoena, persons with standing (G.S. 160A-393(d)) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoena s/he determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to the proper parties.

- 316 Application Procedure. The Board of Adjustment shall hear and decide appeals from any decision or determination made by the Zoning Administrator and all requests for variances.

- A. Filing Appeals and Applications. All appeals and applications for variance shall be filed with the Town Clerk, who shall refer such applications to the Board of Adjustment when all required materials have been submitted. All appeals and applications shall be made on the forms provided by the Town for that purpose. All information required on the form shall be completed and all required materials shall be submitted before an appeal or application shall be considered as having been filed. When the completed appeal or application has been filed with the Town Clerk, the Zoning Administrator shall immediately notify the Chair of the Board of Adjustment that such appeal or application has been filed.

- B. Required Materials. All appeals or applications for variance shall be filed together with the following materials:

1. A neatly drawn map of the property which is the subject of the appeal or application, drawn to scale and showing the location of any Building and other improvement located on the property and showing any adjoining road;
2. If the appeal or variance concerns the elevation of a Building, a drawing showing the elevation of all Buildings and improvements located on the property which is the subject of the appeal and application;
3. A copy of the deed for the property which is the subject of the appeal or application for a variance, a copy of the plat showing such property if one exists, and any contract to purchase or other relevant document; and
4. A fee set by the Town Board of Commissioners, with recommendations from

the Board of Adjustment, which becomes nonrefundable when the Zoning Administrator gives notice to the Chair of the Board of Adjustment that the completed appeal or application has been filed; and any other materials reasonably required by the Chair of the Board of Adjustment.

- C. Time of Hearing. The Chairperson will set the date of hearing in accordance with an annual schedule published in January, maintained by the Clerk to the Board of Adjustment. This schedule will be made available to the Zoning Administrator in order that he/she may inform applicants of the current schedule. All cases shall be heard within 60 days.
- D. Notice of Hearing. The Board of Adjustment shall mail a notice of hearing (i) to the party whose appeal, application, or request is the subject of the hearing; (ii) to the owner of the property that is the subject of the hearing; (iii) to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and (iv) to any other persons entitled to receive notice under this Ordinance. The notice of hearing must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. The Town shall also prominently post a notice of the hearing on the property that is the subject of the hearing or on an adjacent street right-of-way at least 10 days, but not more than 25 days, prior to the date of the hearing.

317 Decision of the Zoning Board of Adjustment. The concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to grant a variance of any provision of this Ordinance. A majority of the members is required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. The Board of Adjustment shall determine contested facts, make decisions within a reasonable time, and base quasi-judicial decisions on competent, material and substantial evidence in the record. Quasi-judicial decisions of the Board shall be in writing and shall reflect the Board's determination of contested facts and their application to standards found in this Ordinance. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board. The decision of the Board shall be delivered by personal delivery, electronic mail, or first-class mail to the applicant, the property owner, and any person who has submitted a written request for a copy, prior to the date the decision becomes effective.

318 Appeals from Decisions of the Zoning Board of Adjustment. Every quasi-judicial decision of the Board shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. Any party with standing under G.S. 160A-393 may appeal by filing a petition for review. A petition for review must be filed with the clerk of superior court by the later of thirty days after the decision is effective or after a written copy of the decision is given in accordance of Section 1205. When first-class mail is used

to deliver the decision to a party, three days shall be added to the time to file the petition for review.

- 319 Variance Limited to Six Months. Any variance granted by the Board of Adjustment must be acted upon within six months or it shall become null and void. The Board of Adjustment may grant one six month extension of a variance if so requested by the applicant.

AMENDMENTS

- 320 Authority. This Ordinance, including the Official Zoning Map of Montreat, North Carolina, may be amended from time to time by the Board of Commissioners in accordance with the provisions of this Article.

- 321 Requirement for Change. When the public necessity, convenience, general welfare, or good zoning practices justify such action, and after the review and report by the Planning and Zoning Commission if required, the Board of Commissioners may undertake the necessary steps to amend the Zoning Ordinance. However, the Board of Commissioners may, in its sole discretion, make changes to the Zoning Ordinance which are necessary (1) to correct typographical errors, (2) to bring the Zoning Ordinance in compliance with any applicable North Carolina or federal law or (3) for which N.C.G.S. § 160A-387 does not require planning agency review. The Board of Commissioners can schedule such amendments for a public hearing under Section ---- without complying with Section ---- below.

- 322 Procedure for Amendments. Requests to amend the Zoning Ordinance or the Official Zoning Map shall proceed in accordance with the following requirements:

- A. Initiation of Amendments. A proposed change or amendment to the Zoning Ordinance or the Official Zoning Map may be initiated by the Board of Commissioners, the Planning and Zoning Commission, the Board of Adjustment, or one or more owners of property within the area affected by the proposed amendment. For purposes of this Article only, the term “property owner” shall include the holder of a sales contract or option to purchase property affected by the proposed change.
- B. Application Procedure.
 - 1) Application forms for amendment requests shall be obtained from the Town Office. Completed application forms, plus any additional information that the Chair or applicant feels to be pertinent, shall be filed with the Zoning Administrator within at least ten (10) days prior to the

Planning and Zoning Commission's meeting at which the application is to be considered. An application requesting a change in the Official Zoning Map shall include a description of the property in question. Any communication purporting to be an application for an amendment shall be regarded as mere notice to seek relief until it is made in the required form.

- 2) An application fee as set forth in the Town of Montreat Fee Schedule shall accompany each application and this fee shall be nonrefundable except in any case where the application is withdrawn prior to its consideration by the Planning and Zoning Commission. Provided, that no application fee shall be required for an application submitted by the Board of Commissioners, the Board of Adjustment or any other Town board or commission.
- 3) Once the Zoning **Administrator** has received the complete application and all other pertinent materials necessary for the consideration of the application, he/she shall forward the application and other materials to the Chair of the Planning and Zoning Commission who shall call for a meeting of the Planning and Zoning Commission to review said application within thirty (30) days of the date the completed application is received by the Chair. The regular meeting of the Planning and Zoning Commission may serve in the place of a called meeting if it falls within the time period set forth in this Subsection below.

C. Hearing by the Planning and Zoning Commission. ~~The Chair of the Planning and Zoning Commission~~ **Zoning Administrator** shall transmit copies of all papers and other data submitted by the applicant on behalf of the amendment request to the members of the Planning and Zoning Commission.

- 1) The Planning and Zoning Commission shall review and prepare a report, including its official recommendation to accept or reject the proposed amendment. The Planning and Zoning Commission shall deliver its written report containing its official recommendation to the Board of Commissioners within ninety (90) days of the date of the meeting at which it considered an application. Failure of the Planning and Zoning Commission to submit recommendations within the ninety (90) day period shall constitute a favorable recommendation.
- 2) All meetings of the Planning and Zoning Commission shall be open to the public. At a meeting, any party may appear in person, by agent, or by attorney.

- 3) No member shall be excused from voting except upon matters involving the consideration of his/her own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the meeting room, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of compensation and allowances of members of the Planning and Zoning Commission is not a matter of involving a member's own financial interest or official conduct.

323 Public Hearing by the Board of Commissioners.

- A. Amendment to the Zoning Ordinance. Before enacting an amendment to the Ordinance, the Board of Commissioners shall hold a public hearing. Public hearings shall be held during the regularly scheduled meeting of the Board of Commissioners.

- 1) At least ten (10) days notice of time and place of the hearing shall be published in a newspaper of general circulation in Montreat for two (2) consecutive weeks.
- 2) At the public hearing, the Board of Commissioners may adopt the proposed amendment, reject the proposed amendment, refer the proposed amendment back to the Planning and Zoning Commission for further consideration or hearing, or modify the proposed amendment and adopt it as modified.
- 3) In the case of a protest against a proposed amendment, signed by the owners of at least twenty percent (20%) either (1) of the area of lots affected by such proposed amendment, or (2) of those immediately adjacent thereto, either in the rear thereof or on either side thereof, extending one hundred feet (100') therefrom, or (3) of those directly opposite thereto, extending one hundred feet (100') from the street frontage of such opposite lots, then such amendment shall not become effective except by favorable vote of three-fourths of all members of the Board of Commissioners.

- B. Changes in the Official Zoning Map. Before enacting a change to the Official Zoning Map, the Board of Commissioners shall hold a public hearing. Public hearings shall be held during the regularly scheduled meeting of the Board of Commissioners.

- 1) If the proposed change to the Official Zoning Map affects fewer than fifty (50) different properties, the owners (as shown on county tax listing) of the parcel(s) of land affected by the proposed change in the zoning map

and the owners (as shown on the county tax listings) of all parcels of land abutting that parcel of land shall be mailed a notice of a public hearing on the proposed change by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing. The person(s) mailing such notices shall certify to the Board of Commissioners that the notices were mailed in accordance with this section, and such certificate shall be deemed conclusive in the absence of fraud.

- 2) If the proposed change to the Official Zoning Map affects at least fifty (50) different properties, then the Town may elect to mail notices as provided above or may, as an alternative, elect to publish once a week for four successive weeks in a newspaper having general circulation in Montreat an advertisement of the public hearing that shows the boundaries of the area affected by the proposed change to the Official Zoning Map and explains the nature of the proposed change. The final two advertisements shall comply with and be deemed to satisfy the provisions of N.C.G.S. §160A-364. The advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by first class mail pursuant to this ordinance. The person(s) mailing such notices shall certify to the Board of Commissioners that the notices were mailed in accordance with this section, and such certificate shall be deemed conclusive in the absence of fraud. In addition to the published notice, the Town shall post one or more prominent signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed change in the Official Zoning Map.
- 3) At the public hearing, the Board of Commissioners may adopt the proposed change, reject the proposed change, refer the proposed change back to the Planning and Zoning Commission for further consideration or hearing, or modify the proposed change and adopt it as modified.
- 4) In the case of a protest against a proposed change signed by the owners of at least twenty percent (20%) either (1) of the area of lots affected by such proposed change, or (2) of those immediately adjacent thereto, either in the rear thereof or on either side thereof, extending one hundred feet (100') therefrom, or (3) of those directly opposite thereto, extending one hundred feet (100') from the street frontage of such

opposite lots, then such amendment shall not become effective except by favorable vote of three-fourths of all members of the Board of Commissioners.

- 5) Following final action by the Board of Commissioners, the Zoning Administrator shall make any necessary changes in the Zoning Map and shall maintain a written record of the type and date of such changes. Action by the Board of Commissioners shall be considered official seven (7) days after the date the change was accepted by the Board of Commissioners, even if the Zoning Administrator has failed to make the appropriate changes.
- 6) The Board of Commissioners shall not reconsider a proposed change to the Official Zoning Map if such change is for the same property or portion thereof, for a period of one (1) year from the date of final determination of the prior request. This waiting period may be waived by a three-fourths vote of the Board of Commissioners if it determines that there may have been substantial changes in conditions or circumstances which may relate to the request.

LEGAL STATUS PROVISIONS

1400 **NOTE:** Moved to Purpose.....

This info now in in Article I.

~~1403 Repeal of Previous Zoning Ordinance. The previous Zoning Ordinance of the Town of Montreat, adopted together with all subsequent amendments thereto, is hereby repealed as of the effective date of this Ordinance.~~

~~All suits at law or in equity and/or all prosecutions resulting from the violations of any zoning ordinance heretofore in effect which are pending in any of the courts of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this Ordinance, but shall be prosecuted to their finality as if this Ordinance had not been adopted; any and all violations of existing zoning ordinances, which have been pre-filed, shall be prosecuted to their finality.~~

~~1404 Effect Upon Outstanding Building Permits. Nothing herein contained shall require any change in the plans, construction, size or designated use of any Building, Structure or part thereof for which a Building Permit has been issued before time of passage of this Ordinance.~~

~~1405 Validity. Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.~~

~~1406 Effective Date. This Ordinance shall take effect and be in force from and after its passage and adoption.~~

**PROPOSED NEW PLANNED UNIT DEVELOPMENT DISTRICT (PUD)
TEXT OF THE PROPOSED ORDINANCE AMENDMENT**

(Items in italics are instructions and not part of the proposed text. Text is now presented as it would be placed in specific sections of the Zoning Ordinance.)

ARTICLE --

- 4.1 Zoning Districts
(Add the following to the list of zoning districts.)

PUD Planned Unit Development District

ARTICLE --

- 5.1 Description of Districts
(Add the following section.)

P. PUD Planned Unit Development District

This district allows projects of innovative design and layout that may not otherwise be permitted under this ordinance because of the strict application of zoning district regulations and/or general development standards. The PUD district encourages innovative land planning and design concepts by:

- (1) Providing flexibility in the application of zoning and development standards or regulations that were designed primarily for individual lots;
- (2) Allowing greater freedom in selecting the means to provide access, light, open space, and design amenities;
- (3) Allowing greater freedom for a broad mix of various land uses in the same development;
- (4) Promoting quality design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations, and land uses;
- (5) Encouraging quality design by allowing higher densities when such increases are supported by superior standards or the provision of additional amenities; and
- (6) Protecting health, safety and general welfare without unduly inhibiting the development of property.

In return for greater flexibility, Planned Unit Developments in this district are expected to deliver communities of exceptional design, character and quality that preserve critical environmental resources and provide open

space amenities. Such communities incorporate creative design in the layout of buildings, open space, and circulation; assure compatibility with surrounding land uses and neighborhood character; and provide greater efficiency in the layout and provision of roads, utilities, and other infrastructure. Because flexibility is essential for the development of such communities, variations from otherwise applicable regulations and standards may be granted with the adoption of the required Planned Unit Development District Master Plan (PUD Master Plan). Except as otherwise provided by the adopted PUD Master Plan, property within an approved PUD shall be subject to all applicable regulations, subdivision plan approvals, site plan approvals, and other permits and approvals required by Town ordinances in effect as of the approval date of the PUD.

5.2.2 NOTES TO THE TABLE OF PERMITTED USES

(Add the following section.)

NOTE --. Planned Unit Development Districts (PUD)
A Planned Unit Development District may contain any use listed in the Permitted Use Table (Section -----) and specified in the approved PUD Master Plan. All uses that are set out in the approved PUD Master Plan shall be treated as a “Use By Right” within the PUD, including those identified as “permitted by right” and those “permitted by SUP (Special Use Permit) only.” The PUD Master Plan shall establish the general locations for permitted uses. The permitted uses may vary for different areas or phases of the PUD Master Plan.

The PUD Master Plan shall identify the total number of residential units and the maximum square footage for non-residential uses. The form for presenting these quantities shall be clearly presented and easy to track. If the measure used includes density, gross density is the applicable standard. For uses listed as “permitted by SUP (Special Use Permit) only” in the Table of Permitted Uses and included as permitted uses in the PUD Master Plan, the PUD Master Plan will establish the development standards necessary to mitigate the impacts of each such use, especially with regard to property adjacent to the PUD.

5.4.1 NOTES TO THE TABLE OF AREA, YARD AND HEIGHT REQUIREMENTS

(Add the following section.)

NOTE 15. Planned Unit Development Districts

- (a) Development standards established by the approved PUD Master Plan shall be the applicable development standards within the PUD. Such standards may include, but are not limited to, building height, building separations, building setbacks, lot size, yard, buffer and landscape requirements or other dimensional standards. When standards have not been provided in the PUD Master Plan, the Town's development standards shall apply.

Development of property within a PUD is subject to applicable Town procedures and is subject to subdivision plan approvals, site plan approvals, and other permits and approvals required by Town ordinances in effect at the time the PUD is approved.

- (b) Development in a PUD district is subject to any applicable overlay district regulations unless amended, waived or modified in accordance with the terms of the approved PUD Master Plan.
- (c) The development standards within the PUD may be varied for and within different areas or phases of the PUD. Such variations in standards shall be identified in the PUD Master Plan.

(Add the following section.)

5.8 PLANNED UNIT DEVELOPMENT DISTRICT (PUD)

5.8.1 A PUD zoning district shall be established through the process for rezoning property pursuant to the procedures for a "General Use" rezoning as contained in Article -- of this ordinance. The PUD is a base-zoning district, not an overlay district.

5.8.2 Size of a PUD
A PUD shall be **five (5) acres** or more in size.

5.8.3 Required PUD Master Plan

Submittal of an application to rezone property to a PUD shall include submission of a Planned Unit Development District Master Plan (PUD Master Plan). The PUD and the PUD Master Plan shall be treated as a single item when acted on by the Town Board of Commissioners of Commissioners. The form and elements of the PUD Master Plan are listed below.

The PUD Master Plan shall include the following:

- a map, including parcel numbers, showing the parcels proposed for the PUD;

- a topographic map(s), for the property included in the proposed PUD;
- a list of permitted uses proposed in the PUD;
- the general locations of the proposed uses;
- a summary of the amount, quantity, or gross density of those uses proposed in the PUD;
- a map(s) showing the locations of water bodies appearing on USGS or NRCS Soil Survey maps within or adjacent to the boundary of the proposed PUD;
- a map(s) showing the locations of wetlands, stream buffers, the 100 year floodplain, and slopes greater than 30%;
- a utility plan that includes the type and general location of the following existing and proposed public utilities:
 - water
 - wastewater
 - reuse water;
- a plan addressing stormwater within the proposed PUD;

The PUD Master Plan may include the following, as appropriate:

- a public service plan for the PUD that evaluates potential impacts on:
 - police service
 - fire service
 - schools;
- a multi-modal transportation plan for the PUD that includes:
 - the location of existing and proposed major roads in and adjacent to the PUD;
 - a plan for an on-site transportation systems that addresses vehicular, bicycle, transit and pedestrian circulation;
- the location of known historic structures or sites within the PUD;
- a recreation and open space plan(s) that includes the locations and standards for greenways, open spaces, and recreation areas within the PUD;
- a boundary buffer plan showing transition treatments between the proposed PUD and adjacent properties;
- proposed land development standards/regulations for the PUD;
- and,
- a plan for development phasing within the PUD.

Further explanations of some of the foregoing required elements are listed in Sections 5.2.2, Note 10; 5.4.1, Note 15; and 5.8.4 through 5.8.8 below.

In addition the applicant may choose to include other items or plans. The elements of the PUD Master Plan may be presented in various forms and can include a combination of text and illustrations. The form(s) chosen

shall clearly illustrate the elements of the PUD Master Plan being presented.

5.8.4 Land Use Mix

- (a) A mix of land uses and/or residential character types is expected in the PUD zoning district. The PUD Master Plan shall identify how uses will be mixed within the PUD. Uses may vary for and within areas or phases of the PUD and it is acknowledged that the mix of uses may need to change over time.
- (b) Planned Unit Developments containing both residential and non-residential uses shall be designed, located, and oriented on the site(s) so that non-residential uses are accessible to residents of the development. In general, the proposed development shall provide for connectivity of land uses through a network of roadway improvements and pedestrian sidewalks and/or trails and/or bicycle facilities, the final layout of which will be determined as specific site plans or subdivision plans are approved.

5.8.5 Utility, Stormwater and Public Service Plans

The PUD Master Plan shall identify the types and locations of existing public utilities and public services (police, fire services, and schools) within the PUD. Additionally, proposed facilities included in the Town's Capital Improvement Program or County Schools Plans shall be identified.

Adopted municipal plans related to public water, wastewater, reuse water and stormwater shall also be identified. The PUD Master Plan shall consider how these facilities, utilities, and services, both existing and planned, might be used or incorporated into development of the PUD.

The PUD Master Plan may, with Town Board of Commissioners of Commissioners approval, include revisions to these existing plans. These plans will, by necessity, become more specific as development progresses. In addition, the PUD Master Plan shall include a timeline or phasing plan, so that public infrastructure is installed as needed to serve specific portions of the PUD. The installation of utility infrastructure shall not be required before it is needed to service property subject to the PUD Master Plan.

5.8.6 Multi-modal Transportation Plan

The PUD Master Plan shall include an on-site transportation system plan addressing vehicular, bicycle, transit and pedestrian circulation. The PUD Master Plan shall show the location of existing and proposed roads

within the PUD. To the extent practicable, the on-site transportation system shall be integrated with the off-site transportation system shown on any adopted adjacent Comprehensive Transportation Plan.

The PUD Master Plan may propose revisions, alternatives, and/or clarifications to this plan. A traffic impact analysis (TIA) may be required for the approval of a PUD. The installation of transportation infrastructure shall be required in developing areas of the PUD as needed to serve that portions of the PUD.

5.8.7 Greenways, Recreation Space, and Open Space

(a) General Requirement

The general location and proposed amount or lengths of greenways, open space and recreation space, shall be identified in the PUD Master Plan. The open space within a PUD shall contain areas for both active and passive uses. The PUD Master Plan shall consider adopted Town plans for greenways, recreation space, and open space, but may propose revisions, alternatives, and/or clarifications to this plan.

(b) Conservation and/or Preservation Areas

The PUD Master Plan shall provide for utilization of portions of the PUD that are subject to conservation easements or otherwise set aside for preservation, open space and/or recreation.

(c) Management of Greenways, Recreation and Open Space

Because these areas may be placed under the control of a public entity such as the Town, or a private entity, such as a property owners association, the PUD Master Plan shall identify which area are to be public and which are to be private. The PUD Master Plan shall include a management plan for those areas that will be privately controlled addressing long-term maintenance responsibility for these areas.

5.8.8 Landscaping and Buffers

(a) Compliance with General Landscaping Requirements

Landscaping shall comply with the standards of Article ----- of this ordinance, except that variations from or modifications to these standards may be permitted in accordance with the PUD

Master Plan or when a site plan or subdivision plan is presented for approval. The proposed landscaping should ensure compatibility with land uses on surrounding properties, create attractive streetscapes and parking areas, and be consistent with the urban design objectives and/or character of the PUD.

(b) Boundary Transitions

The PUD Master Plan shall include a plan(s) for the transition between those land uses proposed within the PUD and those land uses adjacent to the outer boundary of the PUD. These may include buffers, specific compatible land uses, and/or other transitions. These boundary transitions may be varied over their length and/or width.

(c) Internal Buffers

(d) Stream Buffers Not Variable

5.8.9 Interpreting the PUD Master Plan

The Town Administrator, or Town Administrator's designee is authorized, when necessary, to interpret the development standards and/or plans contained in the PUD Master Plan. In such cases, the interpretation should be applied in a way that most closely meets the original intent of the PUD Master Plan.

5.8.10 Adding to, or Deleting Property from, an Existing PUD

Addition of property to an existing PUD requires zoning of that property to a PUD and revision of the existing PUD Master Plan, or applicable portion thereof, to address the added property. Deletion of property from an existing PUD requires either zoning to another district, or as a separate PUD, and revision of the existing PUD Master Plan to address the deletion of property from the PUD.

5.8.11 Amendments to the PUD and PUD Master Plan

Both the Planned Unit Development District (PUD) and the Planned Development District Master Plan (PUD Master Plan) may be amended by the approval of a request to the Town Council. Amendments requiring a rezoning shall follow the process for rezoning property pursuant to the procedures for a "General Use" rezoning as contained in Article X of this ordinance, except as modified by specific procedures set forth herein.

(a) Amendments Requiring Rezoning

- additions or deletions of land that is subject to the PUD
- additions to the uses permitted or changes to their locations
- increases in the total number of residential units
- increases in the maximum square footage of non-residential uses
- reductions in the width of or standards of the treatment in a boundary buffers, other than those allowed by Article -----
- reductions in the amount of recreation or open space
- changes to the development standards in the PUD Master Plan

(b) Other Amendments

Other amendments to, or revisions of the approved PUD Master Plan including, but not limited to, revisions of the utility plan, stormwater plan, circulation plan, phasing plan, or open space plan, shall not be subject to a rezoning. The Town Administrator is authorized to approve these amendments. Such amendments should meet the original intent of the PUD Master Plan.

Accessory Dwelling Units



[Brett VA](#) (CC BY 2.0)

An accessory dwelling unit (ADU) is a smaller, independent residential dwelling unit located on the same lot as a stand-alone (i.e., detached) single-family home. ADUs go by many different names throughout the U.S., including accessory apartments, secondary suites, and granny flats. ADUs can be converted portions of existing homes (i.e., internal ADUs), additions to new or existing homes (i.e., attached ADUs), or new stand-alone accessory structures or converted portions of existing stand-alone accessory structures (i.e., detached ADUs).

Internal, attached, and detached ADUs all have the potential to increase housing affordability (both for homeowners and tenants), create a wider range of housing options within the community, enable seniors to stay near family as they age, and facilitate better use of the existing housing fabric in established neighborhoods. Consequently, many cities and counties have signaled support for ADUs in their plans and adopted zoning regulations that permit ADUs in low-density residential areas.

From this page you can search for resources that provide background, policy guidance, and examples of local plan recommendations and zoning standards for ADUs from across the country. And you can filter these search results by various geographic and demographic characteristics.

Planning for Accessory Dwelling Units

While many communities are interested in expanding housing choices by allowing ADUs in single-family areas, some residents of these areas may be concerned about ADUs changing the character of their neighborhoods or overburdening existing infrastructure. The [research](#) to date does not support fears about lower property values or parking shortages. Conversely, there are some indications that ADUs do increase the supply of affordable housing and do make significant economic contributions to their host communities, through construction activity and property taxes.

Conducting a housing needs assessment before drafting zoning regulations for ADUs can highlight demographic and spatial mismatches between the existing housing supply and the current and projected housing demand. Consequently, it may provide an indication of the total number of ADUs likely to be created in a given time period under a permissible regulatory scheme. Meanwhile, a residential design study can help proactively identify challenges associated with integrating ADUs into established single-family neighborhoods.

When cities and counties address ADUs in their comprehensive plans, they often include policy recommendations related to updating zoning regulations or providing public information about existing regulations. Some communities also explicitly identify land-use categories or place types where ADUs are appropriate.

Zoning for Accessory Dwelling Units

Many cities and counties permit ADUs in one or more single-family zoning districts by right, subject to use-specific standards. Common provisions include an owner-occupancy requirement (for one of the two dwellings), dimensional and design standards to ensure neighborhood compatibility, and off-street parking requirements. Other relatively common provisions include minimum lot sizes and limits on the number of occupants or bedrooms. While some codes also include occupancy restrictions that stipulate that ADUs can only house family members or domestic employees, this type of restriction can severely limit the potential for ADUs to address a shortage of rental housing.

In some states, such as [California](#) and [Vermont](#), localities must permit ADUs by right, under certain conditions. In some others, state laws pre-empt some aspects of local zoning for ADUs or actively encourage cities and counties to adopt permissive zoning regulations for ADUs.

Many older communities have an existing supply of illegally created ADUs. Some of these communities offer, or have offered, some form of limited amnesty to owners of illegal ADUs. These amnesty programs may waive permitting and inspection fees in exchange for owners registering their units, and they typically expire within a year or two of adoption.

BACKGROUND RESOURCES

[A Room of One's Own: Accessory Dwelling Unit Reforms and Local Parochialism](#)

This article discusses the national trend in state and local regulations toward more permissive regulations for accessory dwelling units (ADUs) and presents the findings of a study of local regulations in California.

[Accessory Apartments for Today's Communities](#)

This short article highlights the potential of accessory dwelling units (ADUs) as an affordable housing strategy and briefly discusses common barriers to developing ADUs.

[Accessory Dwelling Units: A Smart Growth Tool for Providing Affordable Housing](#)

This article provides a general overview of accessory dwelling units (ADUs), discusses potential regulatory barriers to ADUs and state efforts to promote ADUs in Florida, and includes considerations for local zoning ordinances.

Accessory Dwelling Units: Case Study

This short report documents how six different localities regulate accessory dwelling units (ADUs) and discusses the potential benefits of removing regulatory barriers to ADUs.

Accessory Dwellings

This website contains numerous pages with information about accessory dwelling units (ADUs) as a concept, ADU design and construction, state and local policy for ADUs, and research about ADUs.

Accessory Housing Is Part of the Solution

This short article summarizes a number of common regulatory barriers to affordable housing. These barriers include process requirements, design standards, occupancy standards, and lot size and parking standards.

Responding to Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units

This report summarizes the research to date about the potential benefits of accessory dwelling units (ADUs) and micro-apartments, analyzes the regulatory barriers to developing these dwellings, and identifies questions for future research.

REPORTS

Accessory Dwelling Unit Survey for Portland, Eugene, and Ashland, Oregon

This report presents findings from a survey of accessory dwelling unit (ADU) property owners in three Oregon cities.

Accessory Dwelling Units in Portland, Oregon: Evaluation and Interpretation of a Survey of ADU Owners

This report analyzes findings from a survey of accessory dwelling unit (ADU) property owners in Portland, Oregon.

Accessory Dwelling Units: Case Study

This short report documents how six different localities regulate accessory dwelling units (ADUs) and discusses the potential benefits of removing regulatory barriers to ADUs.

Home Remedies: Accessory Apartments on Long Island

This report analyzes local regulations for accessory dwelling units (ADUs) on New York's Long Island.

Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle, and Vancouver

This report presents the results of a survey of accessory dwelling unit property owners in Portland, Oregon; Seattle; and Vancouver, British Columbia.

Promoting Workforce Housing: Expanding Locations and Development Potential

This report includes a model ordinance template to help cities in Montgomery County, Pennsylvania, draft regulations that encourage the development of accessory dwelling units.

[View all reports](#)

ARTICLES

A Room of One's Own: Accessory Dwelling Unit Reforms and Local Parochialism

This article discusses the national trend in state and local regulations toward more permissive regulations for accessory dwelling units (ADUs) and presents the findings of a study of local regulations in California.

Accessory Apartments for Today's Communities

This short article highlights the potential of accessory dwelling units (ADUs) as an affordable housing strategy and briefly discusses common barriers to developing ADUs.

Accessory Dwelling Units as Low-Income Housing: California's Faustian Bargain

This article evaluates the efficacy of a California statute that permits cities and counties to count accessory dwelling units (ADUs) toward affordable housing production goals.

Accessory Dwelling Units: A Smart Growth Tool for Providing Affordable Housing

This article provides a general overview of accessory dwelling units (ADUs), discusses potential regulatory barriers to ADUs and state efforts to promote ADUs in Florida, and includes considerations for local zoning ordinances.

Accessory Housing Is Part of the Solution

This short article summarizes a number of common regulatory barriers to affordable housing. These barriers include process requirements, design standards, occupancy standards, and lot size and parking standards.

Understanding and Appraising Properties with Accessory Dwelling Units

This article describes challenges associated with appraising properties with accessory dwelling units (ADUs) and proposes an appraisal method based on income capitalization.

[View all articles](#)

STATUTES

[California Planning and Zoning Law](#)

These statutes belong to the Accessory Dwelling Units, Capital Improvements Programming, Environmentally Sensitive Areas, and Scenic View Protection collections.

[Florida Accessory Dwelling Units Statute](#)

Florida state law authorizes all localities with a shortage of affordable rental housing to adopt an ordinance that permits accessory dwelling units (ADUs) in all areas zoned for single-family residential use.

[Hawaii County Zoning Statute](#)

Hawaii state law authorizes all counties to adopt zoning standards that permit two single-family dwellings on any lot where a residential dwelling unit is permitted.

[New Hampshire Planning and Zoning Statutes](#)

These statutes belong to the Accessory Dwelling Units, Capital Improvements Programming, and Transfer of Development Rights collections.

[Oregon Comprehensive Land Use Planning Statutes](#)

Oregon requires most localities to permit one interior, attached, or detached accessory dwelling unit (ADU) by right for reach existing or newly constructed single-family detached dwelling.

[Rhode Island Zoning Enabling Act](#)

Rhode Island state law authorizes cities and towns to protect scenic views, establishes a transfer of development rights program, and specifies conditions for localities to permit accessory dwelling units.

[View all statutes](#)

GUIDES

[Accessory Dwelling Unit Homeowners' Handbook: A Guide for Homeowners on Oahu Interested in Building an Accessory Dwelling Unit](#)

This local guide explains property owner options for developing accessory dwelling units in Oahu County, Hawaii.

[Accessory Dwelling Unit Manual](#)

This local guide explains property owner options for developing accessory dwelling units in Santa Cruz, California.

[Accessory Dwelling Unit Memorandum](#)

This guide is designed to help cities and counties in California update local zoning regulations for accessory dwelling units (ADUs) to comply with state statutes.

[Accessory Dwelling Units Program Guide](#)

This local guide explains the application and review process for developing accessory dwelling units in Portland, Oregon.

[Accessory Dwelling Units: A Guide to Accessory Apartments in Charlottesville, VA](#)

This local guide explains property owner options for developing accessory dwelling units in Charlottesville, Virginia.

[Accessory Dwelling Units: A Practical Option to Promote Affordability](#)

This concise guide provides an overview of local policy issues related to accessory dwelling units (ADUs) and includes specific recommendations for cities and counties in Delaware to help them develop zoning regulations for ADUs.

[View all guides](#)

[MODEL ORDINANCES](#)

[Accessory Dwelling Unit Memorandum](#)

This guide is designed to help cities and counties in California update local zoning regulations for accessory dwelling units (ADUs) to comply with state statutes.

[Accessory Dwelling Unit Model Ordinance](#)

This model ordinance provides a template to help cities in Southwest Idaho draft regulations that encourage the development of accessory dwelling units.

[Accessory Dwelling Unit Model Ordinance](#)

This model ordinance provides a template to help cities and towns in Rockingham County, New Hampshire, draft regulations that encourage the development of accessory dwelling units.

[Accessory Dwelling Units: Issues & Opportunities](#)

This guide provides a comprehensive overview of local policy issues related to accessory dwelling units (ADUs) and includes specific recommendations for cities and counties in Washington to help them develop zoning regulations for ADUs.

[Accessory Dwelling Units: Model State Act and Local Ordinance](#)

This guide includes model state and local legislation to encourage the development of accessory dwelling units.

[Massachusetts Model Bylaw for Accessory Dwelling Units](#)

This model bylaw provides a template to help municipalities in Massachusetts draft regulations that encourage the development of accessory dwelling units.

[View all model ordinances](#)

COMPREHENSIVE PLANS

[Auburn, WA, Imagine Auburn Comprehensive Plan](#)

The city's comprehensive plan includes several policy recommendations that support the development of accessory dwelling units.

[Moscow, ID, Comprehensive Plan](#)

The city's comprehensive plan discusses the benefits and challenges associated with expanding the supply of accessory dwelling units (ADUs) and includes a policy recommendation that supports the development of ADUs.

[Orono, ME, Comprehensive Plan](#)

The town's comprehensive plan includes two specific policy recommendations that support the development of accessory dwelling units.

[Portland, OR, Comprehensive Plan](#)

This comprehensive plan belongs to the Accessory Dwelling Units, Comprehensive Planning, Environmentally Sensitive Areas, Inclusionary Housing, Social Equity, Solar Energy, and Tree Preservation and the Urban Forest collections.

[Prince George's County, MD, Plan 2035 General Plan](#)

The county's comprehensive plan, which achieved Bronze-level recognition in APA's Comprehensive Plan Standards for Sustaining Places Recognition Program Pilot, includes several policy recommendations that support the development of accessory dwelling units.

[Temple Terrace, FL, Imagine 2040 Comprehensive Plan](#)

This comprehensive plan belongs to the Accessory Dwelling Units, Capital Improvements Programming, and Comprehensive Planning collections.

[View all comprehensive plans](#)

REGULATIONS

[Auburn, AL, Zoning Ordinance](#)

The city's zoning code addresses accessory dwelling units (ADUs) and student housing.

[Auburn, WA, Municipal Code](#)

The city's zoning code permits internal, attached, and detached accessory dwelling units by right in all districts that permit single-family homes, subject to use-specific standards.

[Bentonville, AR, Zoning Code](#)

This regulation belongs to the Accessory Dwelling Units, Content-Neutral Sign Regulation, Downtown Revitalization, and Solar Energy collections.

Bloomington, MN, Code of Ordinances

This regulation belongs to the Accessory Dwelling Units, Active Transportation, Creative Placemaking, and Green Building collections.

Boulder, CO, Revised Code

This regulation belongs to the Accessory Dwelling Units, Active Transportation, Environmentally Sensitive Areas, Food Trucks, Inclusionary Housing, Marijuana-Related Uses, Rethinking Off-Street Parking Requirements, Social Service Uses, Solar Energy, and Student Housing collections.

Chapel Hill, NC, Code of Ordinances

This regulation belongs to the Accessory Dwelling Units, Green Building, Inclusionary Housing, Residential Infill Development, Solar Energy, Student Housing, and Tree Preservation and Urban Forestry collections.

[View all regulations](#)

RELATED COLLECTIONS

Housing an Aging Population

This collection catalogs resources that provide background, policy guidance, and examples of plan recommendations and zoning and licensing regulations for various types of residences and facilities designed for or marketed to an aging population.

Tiny Houses and Micro-Apartments

This collection catalogs resources that provide background, policy guidance, and examples of local development regulations for tiny houses, tiny house subdivisions, and micro-apartments from across the country.

ACCESSORY DWELLING UNIT MODEL ORDINANCE

I. Authority

This section is enacted in accordance with the provisions of RSA 674:71 – 73 and RSA 674:21.

II. Purpose

The purposes of the accessory dwelling unit ordinance are to:

- (a) Increase the supply of affordable housing without the need for more infrastructure or further land development.
- (b) Provide flexible housing options for residents and their families.
- (c) Integrate affordable housing into the community with minimal negative impact.
- (d) Provide elderly citizens with the opportunity to retain their homes and age in place.

III. Definition

An “accessory dwelling unit” means a residential living unit that is within or attached to a single-family dwelling [OPTIONAL: or is located in a detached structure] and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

IV. Conditional Use Permit Required

Pursuant to RSA 674:21 the Planning Board is hereby authorized to grant a Conditional Use Permit to allow for accessory dwelling units in accordance with the restrictions and requirements of this section.

EXPLANATION

RSA 674:71-7341 is the new statutory reference for accessory dwelling units (ADU) and RSA 674:21 Innovative Land Use Controls is the statutory reference for administering conditional use permits.

These purposes are based on the purposes from the State law. The municipality may add additional purposes as desired.

An ADU may be deemed a unit of workforce housing for purposes of satisfying the municipality’s obligation under RSA 674:59 if the unit meets the criteria in RSA 674:58, IV for rental units.

This is the State definition for an ADU. Because the State law allows the use of detached structures for an accessory dwelling unit, the ordinance definition should be expanded to state such, if a municipality wishes to allow accessory dwelling units in or as detached structures.

Accessory Dwelling units can be permitted by right, as: 1) a Conditional Use Permit by the Planning Board (appeal to Superior Court); 2) a Special Exception by the Zoning Board of Adjustment (appeal to the ZBA); or 3) a building permit approved and issued by the Building Inspector. This model recommends approval as a Conditional Use Permit by the Planning Board. If a municipality uses the Conditional Use Permit or Special Exception process items in section IV, (a)-(g) are recommended as criteria for approval of an ADU application.

V. Criteria for Approval

All of the following criteria must be met in order for the zoning board/planning board/building inspector to approve the construction of an accessory dwelling unit:

- (a) A maximum of one (1) accessory dwelling unit may be permitted on property located in zoning districts that allow single-family dwellings and must be located within or attached to the principal single family dwelling unit [OPTIONAL: or be located in a detached structure on the property].
- (b) An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit. The accessory dwelling shall have an independent means of ingress and egress.
- (c) All municipal regulations applicable to single-family dwellings shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit including, but not limited to, lot and building dimensional requirements. A minimum of two parking spaces shall be provided for the accessory dwelling unit.
- (d) The applicant for a conditional use permit shall demonstrate adequate provisions for water supply and sewage disposal for the accessory and primary dwelling units in accordance with RSA 485-A:38. Water and wastewater systems for the principal and accessory dwelling units may be combined or separate.
- (e) Either the principal dwelling unit or the accessory dwelling unit must be owner occupied. The owner must demonstrate that one of the units is their principal place of residence and legal domicile. Both the primary dwelling unit and the accessory dwelling unit must remain in common ownership.
- (f) Accessory dwelling units shall maintain an aesthetic continuity with the principal dwelling unit as a single-family dwelling.

Provision (a) in State law indicates clearly that an accessory unit is expected to have a direct physical connection to the original single family unit. A local ordinance can offer some flexibility (i.e., connection through a breezeway) but the combined structures are intended to maintain the appearance of a single family dwelling.

OPTIONAL: include a definition of “attached”. Example: An attached accessory dwelling unit shall be connected to the principal dwelling unit by a shared wall or roofed and enclosed structure with doors to both units.

A municipality may require an applicant to upgrade an existing septic system so that the existing system is designed and constructed to provide the septic capacity required for the total number of bedrooms on site after the ADU has been constructed.

*A municipality **may not** require a familial relationship between the occupants of an ADU and the occupants of a principal dwelling unit. Both units must be in common ownership.*

In considering detached ADUs, municipalities are required to determine if such uses are appropriate for their community. This model encourages the use of detached structures but

- (g) An accessory dwelling unit size may not be restricted to less than 750 square feet.
- (h) [OPTIONAL]: Detached Accessory Dwelling Units. Detached accessory dwelling units are permitted. Detached accessory dwelling units shall require that the lot be 20 percent larger than the minimum lot size required in the residential zone it is proposed.}

requires additional lot size and prohibits more than one ADU per single family lot.

Provision (g) allows the municipality to prepare regulations outlining the aesthetic values necessary to comply with this section. The municipality can also mandate maximum and minimum unit sizes as long as the minimum is no less than 750 square feet. (Note: This does not mean an applicant cannot build an ADU smaller than 750 sq. feet, but the municipality cannot require it to be smaller.) A common requirement is to limit the accessory unit to no larger than one-third the size of the combined square footage of living space in the principal dwelling unit and proposed accessory dwelling unit.

- (i) The accessory dwelling unit shall have no more than 2 bedrooms.

State law prohibits a municipality from limiting ADUs to less than two bedrooms. However, an applicant may propose a one bedroom ADU. This model advocates no more than two (2) bedrooms. The municipality should choose a number of bedrooms that emphasizes the new unit is secondary to the primary dwelling unit on site.

VI. Occupancy Permit Required

Prior to occupancy of the accessory dwelling unit, the homeowner shall obtain an occupancy permit from the Building Inspector.

Note on Application Requirements: A municipality may wish to specify submission requirements for ADU applications, perhaps creating a new application form with a checklist of items, and add a note to their ordinance referencing that completion of such an application is required.