

**Town of Montreat
Planning and Zoning Commission
Meeting Agenda
December 5, 2019 – 10:30 a.m.
Walkup Building**

I. Call to Order

- Welcome
- Moment of Silence/Invocation

II. Agenda Adoption

III. Minute Adoption

- A. November 21, 2019 Meeting Minutes

IV. Old Business

A. Zoning Ordinance Revisions

- Draft – Suggested Definitions; B&B, Hotel, etc.....
- Draft – Article II Definitions; Continue from where review ended.

V. New Business

A. Short Term Rentals

- School of Government Information

B. New Ordinance Sections

- Conditional Zoning District
- Planned Unit Development District

C. Discussion of Next Topics

VI. Public Comment

IX. Adjournment

**Town of Montreat
Planning and Zoning Commission
Meeting Minutes
November 21, 2019 – 10:30 a.m.
Walkup Building**

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

Board members absent: None

Town staff present: Adrienne Isenhower, Zoning Administrator
Alex Carmichael, Town Administrator
Stuart Bass, Regional Planner, Land-of-Sky Regional Council

No members of the public were present. Mr. Scheu called the meeting to order at 10:30 a.m., and led the group in a moment of silence.

Agenda Approval

Mr. Blake moved to adopt the agenda as presented. Mr. Dean seconded and the motion carried 8/0.

Meeting Minutes Adoption

Mr. Dean moved to approve the minutes as amended. Mr. Blake seconded and the motion carried 8/0.

Old Business

A. Introduction of State Statute 160D:

There was a brief discussion regarding noticing requirements for variances and conditional use permits and whether 200ft was preferred over 500ft. Mr. Crawford moved to amend the noticing requirements to 250ft. Mr. Dean seconded and the motion carried 8/0.

A School of Government workshop is scheduled on the topic of State Statute 160D on January 21, 2020 from 1:00 p.m. to 4:30 p.m. at the NC Arboretum in Asheville.

New Business

- A. **Zoning Ordinance Revisions:** Mr. Bass briefly reviewed the revisions thus far. The Commission members spent a great deal of time wordsmithing the proposed revisions. These changes, mostly punctuation and grammatical in nature, will be documented in the revisions. A few sections were renumbered while others were removed entirely for simplicity. The definitions of Bed and Breakfasts, Boarding Houses and Air B&Bs will be discussed at the December 5th meeting. The Commission asked for follow-up with regards to the definition of “decks”. An additional definition was requested for “average natural grade”. Some sections need to be re-alphabetized in the new ordinance revision. Mr. Scheu requested that Mr. Bass modernize the Home Occupation section. The sections regarding flood/floodway/flood fringe can be found in the Flood Prevention Ordinance and were removed from the definitions. It was decided to combine the definitions of Inns and Lodges.
- B. **Review and Recommendations of Ordinance Amendments:** Mr. Carmichael stated that the Staff has experienced some confusion with responsibility and necessary signatures in development approvals. By amending the ordinance with the recommended changes, staff will have more clarification on permitting procedures and the application process would be streamline for property owners/applicants. Mr. Blake moved to approve recommended changes. Mr. Dean seconded and the motion carried 8/0.

The next meeting will be held on December 5th.

Adjournment

Mr. Dean moved to adjourn the meeting. Mr. Crawford seconded and the motion carried 8/0. The meeting was adjourned at 12:29 p.m.

Bill Scheu, Chair

Angie Murphy, Town Clerk

**Planning and Zoning Commission
Meeting Minutes
November 21, 2019**

Bed and Breakfast (B&B) – A transient lodging establishment, located in what was formerly a single family dwelling, and owner-occupied, engaged in providing overnight lodging for the general public, and which serves breakfast to overnight guests.

Hotel - A building in which sleeping accommodation is provided and offered to the public for compensation, in which the rooms are usually occupied singularly for hire, and in which building there is usually a kitchen and public dining room for the accommodation of guests.

Motel – One or a group or series of buildings, containing guest rooms for rent, which are designed and used primarily for the accommodation of transient automobile travelers, by providing direct access to adjacent parking.

Lodge – A building or associated group of buildings for which accommodation is provided for a fee to paying guests, and where the term has been used to describe accommodations that are more rustic in nature, or in some way affiliated with a park or natural setting.

Inn – A multiple unit building, where overnight stays are provided for compensation. The term "inn" historically characterized a rural hotel which provided lodging, food and refreshments.

Manufactured Home. A dwelling unit, designed for use as a permanent residence, that is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed for installation or assembly and installation on the building site.

Manufactured Home, Class A. A dwelling unit that:

(i) is not constructed in accordance with the requirements of the North Carolina Uniform Residential Building Code as amended, and

(ii) is composed of two or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site, and

(iii) meets or exceeds the construction standards of the US Department of Housing and Urban Development, and (iv) conforms to the following appearance criteria:

(A) the manufactured home has a minimum width, as assembled on the site, of twenty feet;

- (B) the pitch of the manufactured home's roof has a minimum nominal vertical rise of three inches for each 12 inches of horizontal run and the roof is finished with asphalt or fiberglass shingles;
- (C) a continuous, permanent curtain wall, unpierced except for required ventilation and access, is installed under the manufactured home; and
- (D) the tongue, axles, transporting lights, and removable towing apparatus are removed after placement on the lot and before occupancy.

Manufactured Home, Class B. A manufactured home constructed after July 1 , 1996 that meets or exceeds the construction standards promulgated by the US Department of Housing and Urban Development that were in effect at the time of construction, but that does not satisfy all of the criteria necessary to qualify as a Class A manufactured home but meets the following standards:

- (A) skirting or a curtain wall, unpierced except for required ventilation and access, is installed under the manufactured home and may consist of brick, masonry, vinyl, or similar materials designed and manufactured for permanent outdoor installation and
- (B) stairs, porches, entrance platforms, ramps and other means of entrance and exit to and from the home are installed or constructed in accordance with the standards set by the NC Department of Insurance and attached firmly to the primary structure and anchored securely to the ground.

Manufactured Home, Class C. Any manufactured home that does not meet the definitional criteria of a Class A or Class B manufactured home. Manufactured homes that do not meet the definitional criteria of Class A, B, or C manufactured homes are classified as recreational vehicles.

Farm Use, Bona Fide: As defined by the United States Department of Agriculture (USDA), any operation that sells at least one thousand dollars (\$1,000) average annual income of agricultural commodities, or that would have sold that amount of produce under normal circumstances over a three year period from the date of application as shown on IRS Form (F). Additionally, a farm shall be classified as “bona fide” if participating in the ----- County Use Value Assessment Program for the taxation of agricultural, horticultural, and forestland.

ARTICLE III – DEFINITIONS

500 Interpretation of Certain Words or Terms. Except as specifically defined herein, all words used in this Ordinance have their customary dictionary definitions. For the purposes of this Ordinance, certain words or terms used herein are defined as follows:

500.1 Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular;

500.2 The word "shall" is always mandatory;

500.3 The word "may" is permissive;

500.4 The word "lot" includes the word "plot" or "parcel";

500.5 The word "person" includes a firm, association, organization, partnership, trust company, limited liability company, or corporation as well as an individual;

500.6 The word "used" or "occupies" as applied to any land or Building shall be construed to imply that said land or Building is actually "arranged" or "designed" to be used or occupied;

500.7 The word "map" or "zoning map" shall mean the Official Zoning Map of the Town of Montreat, North Carolina;

500.8 The term "Planning Commission" refers to the Montreat Planning and Zoning Commission. The terms "Town Commissioners" "Town Board of Commissioners" or "Mayor and Town Commissioners" refer to the legally constituted and elected governing body of the Town of Montreat. The term "Board of Adjustment" refers to the Zoning Board of Adjustment for the Town of Montreat.

501 Definitions.

Accessibility Feature: A separate structure or attached building appurtenance, or any combination thereof, which provides an increased level of accessibility for building occupants or members of the public constituting an improved accessible path of travel from the parking/passenger loading area to a building entrance. Accessibility features may include, but are not limited to: tramways, ramps, stairs and stairway landings, chair lifts, stair lifts and elevators.

Accessory Building or Use: A building or use that: 1) is clearly incidental to and customarily found in connection with a principal building or use; 2) is subordinate to and serves a principal building or a principal use; 3) is subordinate in area, extent, or purpose to the principal building or principal use served; 4) contributes to the comfort, convenience, or necessity of occupants in the principal building or principal use served; and 5) is located on the same lot as the principal building or use served.

Alley: A service roadway which provides secondary access to the side or rear of abutting property and not intended for general traffic circulation.

Antenna: Any device installed for more than three days which is primarily intended to receive or to transmit airway communication signals.

Antenna Dimensions: The length, width, or depth of an antenna, not including any part of its support Structure.

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

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

Boarding House: A dwelling unit of part thereof where, for compensation, lodging and meals are provided.

Buffer: An area of natural or planted vegetation, typically established to separate types of use or to provide a protected area for environmental quality; such as landscaping, storm water runoff, or stream maintenance.

Buildable Area: That portion of any lot which may be used or built upon in accordance with the regulations governing the Zoning District within which the lot is located when the front, side, and rear yard requirements for the Zoning District have been subtracted from the total area. The required front, side and rear yards shall be measured inward toward the center of said lot from all points along the respective property lines. Buildable area shall be computed by measuring the allotted distances, perpendicular from each property line (See Section 614 for irregularly shaped lots). One exception exists for this requirement as follows: Where a lot line is the center of the street and a utility easement is provided along the street, the setback shall be measured from the side of the utility easement closest to the center of the lot.

Building: Check new State definition. Any Structure, fully or partially enclosed, and isolated by exterior walls constructed or used for residence, business, industry or other public or private purposes, or accessory thereto, and including tents, trailers, mobile homes, and similar Structures whether stationary or movable. Appurtenant features, or exterior structural elements requiring permanent attachment to a Building, are considered part of the Building for the purposes of this Section unless otherwise expressly permitted. Decks, whether free-standing or attached, are required to comply with the setback provisions for buildings.

Building Height: The vertical distance measured from average natural grade encompassing the living areas of a structure to the highest point of its roofline, or from the top of the parapet or roof surface for flat-roofed structures. Carports, garages, decks and other non-inhabited additions to structures that may increase the building footprint are not included in calculation of average natural grade.

Cemetery: A parcel or land used for interment of the dead in the ground or in mausoleum.

Certificate of Zoning Compliance: A certification that plans and premises conform to the provisions of the Zoning Ordinance.

Clinic: An establishment where medical, mental or dental patients, who are not lodged overnight, are given examinations and treatment.

Columbarium: A Structure containing niches for the deposit of urns containing cremains or an ash garden for the scattering of cremains.

Special Conditional Use: A specific use which may be permitted in a Zoning District by the Board of Adjustment subject to the Board's findings that the use would not adversely affect adjacent property or the health, safety or general welfare of persons in the area adjacent to the use. Such use may be permitted only in a Zoning District where said use is specifically listed as a conditional use. This will become Special Use.

Special Conditional Use Permit: This will become Special Use. A permit issued by the Zoning Board of Adjustment for a use which is permitted in a Zoning District, subject to review and approval by the Board of Adjustment. The Conditional Use Permit shall be issued only when the specific conditions and review procedures set forth in this ordinance are met to maintain and protect the health, safety and general welfare of persons residing in the area, and to insure the compatibility of the use with adjacent properties and within the entire community of Montreat.

Community Facilities: Facilities designed to serve the community such as libraries, and community centers, provided that such facilities are not operated for profit.

~~Customary Home Occupation: Any occupation conducted in a dwelling unit or accessory building provided that:~~ Any use conducted entirely within a dwelling or an accessory building and carried on by the occupants thereof, which use is incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Specific regulations concerning home occupations are delineated in Section -----.

- 1) No person other than members of the family residing on the premises shall be engaged in such occupation;

- 2) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than fifty percent (50%) of the floor area of the dwelling unit shall be used in the conduct of the home occupation;
- 3) There shall be no change in the outside appearance of the Building or premises, or other visible evidence of the conduct of such home occupation other than one (1) sign, not exceeding a four (4) square foot area, non-illuminated, and mounted flat against the wall of the principal Building;
- 4) No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard. **Move these standards.**

Day Care Center: A child day care facility includes child care centers, family child care homes, and any other child care arrangement for three or more pre-school aged children as defined in NCGS 110-86(3); Also a center providing day care on a regular basis for more than two hours per day for more than five adults.

Deck: A structural platform, which may be constructed of any materials, either free standing or attached to a building, connected by structural supports at grade.

Dedication: The appropriation of land or an easement therein by the owner for use by the public as evidenced by the recording of a legal instrument (title transfer, deed restriction, etc.). The area is usually a strip of land, a street right-of-way or utilities easement, within which there is to be or may be located streets, sidewalks, utility systems and drainage Structures or a lot intended to be used for a public purpose such as a park, playground, or other public facility.

Density: The number of dwelling units per acre of land developed or used for residential purposes. Unless otherwise clearly stated, density requirements in this Ordinance are expressed in dwelling units per acre of land devoted to residential use exclusive of land utilized for streets, alleys, parks, playgrounds, school grounds, or other public uses.

Diameter Breast Height (DBH): The diameter of the trunk of a tree four and one-half feet above average grade.

District: Any section of the Town of Montreat in which zoning regulations are uniform.

Dormitory: A Building used as group living quarters for a student body or religious order as an accessory use for a college, boarding school, monastery or other similar institutional use. Dormitories may contain common, shared kitchen facilities and bathrooms but shall not contain individual kitchen facilities and private bathrooms.

Montreat Zoning Ordinance

Dwelling: Any Building, or portion thereof, which is designed for living and/or sleeping purposes for one or more families.

Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons including permanent facilities for living, sleeping, eating, cooking, and sanitation.

Dwelling, Single-Family: A detached dwelling unit, other than a ~~mobile~~ **manufactured** home, designed for or occupied exclusively by one family. ~~except for Vacation/Conference Rentals as allowed in Chapter H, Article II of the General Ordinances of the Town of Montreat.~~

Dwelling, Two-Family: A detached Building including two individual dwelling units, **designed for separate occupancy, separated by a common wall.**

Dwelling, Multi-Family: A dwelling intended or used for occupancy by three or more families living independently of each other, with the number of families in residence not exceeding the number of dwelling units provided.

Easement: A grant of one or more of the property rights by the property owner to and/or for use by the public or another person or entity for a particular purpose or purposes. Examples include access easements, drainage easements or utility easements.

Educational Facility: An Educational Facility includes, but is not limited to the following: Buildings and equipment used primarily for the education of children and/or adults, instructional research, conferences, administrative purposes, and supporting service operations. An Educational Facility includes classroom Buildings, laboratories, lecture halls, libraries, administration Buildings, conference centers, gymnasiums, field houses, dormitories, counseling centers, **and Buildings for the storage of transportation and maintenance equipment, office machines and furniture.**

Family: One or more persons occupying a single Dwelling Unit, provided that unless all members are related by blood, adoption, marriage or legal **guardianship, no such family shall contain over four (4) unrelated people.**

Family Care Home: ~~A home that provides room and board, and personal care and rehabilitation services to people with special needs for no more than six (6) residents. Persons with special needs are those with physical, emotional, or mental disabilities or are elderly. No Family Care Home shall be located closer than one mile from any other Family Care Home.~~ **A home meeting the North Carolina Residential Building Code with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for six or less resident handicapped persons, pursuant to NCGS 168-21.**

Farm, **Bona Fide:** ~~A tract of land generally composed of one (1) acre or more, usually with a house, barn, and other accessory Buildings, on which crops and/or livestock are raised for livelihood. A farm may consist of land or water devoted to the raising of livestock or crops.~~ **Agricultural activities as set forth in G.S.160D-9-3.**

Fence: A physical barrier or enclosure intended to prevent escape or intrusion or to mark a boundary, **interposed between two portions of land.**

1) ~~Fence, Closed:~~ A fence in which the opening through which clear vision is possible from one side to the other on a horizontal plane **comprise thirty percent (30%) or less of the total side area of the fence.**

2) ~~Fence, Open:~~ A fence in which the openings through which clear vision is possible from one side to the other on a horizontal plane **comprise seventy percent (70%) or more of the total side area of the fence.** **Difficult to discern.**

Flammable Liquids: A liquid having a flash point below one hundred degrees (100°) Fahrenheit and having a vapor pressure not exceeding forty (40) pounds per square inch absolute at one-hundred degrees Fahrenheit as defined by the National Fire Codes of the National Fire Protection Association as amended.

Flood: A temporary rise in stream flow or stage that results in water overtopping its banks and inundating areas adjacent to the watercourse.

Floodway: That portion of the channel and flood plain of a stream designated as a minimum area to provide passage for the Regional Flood, without increasing the elevation of that flood at any point by more than one foot. For the purposes of the Ordinance, the Floodway shall be along Flat Creek and its tributaries as defined on the Official Zoning Map of the Town of Montreat, as amended.

Floodway Encroachment Lines: Lateral limits of a Floodway along streams or other bodies of water, within which, in the direction of the stream or other body of water, no Structure or fill may be added, nor flammable liquids stored, unless specifically permitted herein. The purpose is to preserve the flood carrying capacity of the Floodway. The location of the Floodway Encroachment Lines is such that the floodway between them, including the channel, will handle the Regional Flood flow without increasing the flood stage by more than one foot.

Flood Fringe Area: The land area located between the Floodway Encroachment Lines of a Floodway and maximum elevation subject to inundation by the Regional Flood as defined herein.

Flood, Regional: A flood which is representative of the largest floods to have occurred on a particular stream or a similar stream in the same geographical area.

Floor Area, Gross: The sum of the gross horizontal areas of the several floors of a Building from the exterior face of exterior walls, or from the centerline of a wall separating two Buildings, but excluding any space where the floor-to-ceiling height is less than six feet.

Floor Area, Net: The total of all floor areas of a Building, excluding stairwells, elevator shafts, equipment rooms, interior vehicular parking or loading, any space where the floor-to-ceiling height is less than six feet, and all floors below the first or ground floor, except when used or intended to be used for human habitation or service to the public.

Front Building Line: A line extended from side property lines which runs parallel to a street or streets and which shall be situated the same distance from said street or streets as the shortest distance between said street or streets and the primary Building on the lot. Where a lot is situated at an intersection of two streets the lot shall be considered to have two front Building lines, each as separately delineated by the definition herein.

Garage, Private: An accessory Building or portion of a principal Building used for the storage of private motor vehicles, in which no business, occupation, or service for profit is in any way connected. The term "garage" shall include the term "carport."

Garage, ~~Repair~~ Commercial: Any garage which **for consideration** is used for storage, repair, rental, **maintenance**, servicing, washing, adjusting, or equipping of automobiles or other vehicles. **A garage exceeding 850 square feet in area or used to store more than four (4) automobiles, shall be deemed a ~~Repair~~ Commercial Garage.**

Grade, Average Natural: The elevation determined by computing the mathematical average of the elevations of the highest and lowest points on the proposed development site.

Greenspace: Strips of publicly owned and maintained land, generally (but not always) following the rights-of-way of public streets, that are **designated** ~~used only~~ for the recreation, fishing, ~~greenspaces~~ **natural areas**, and beautification of the Town as defined by the "Greenspace Resolution" ~~unanimously~~ adopted by the Town Commission on July 1, 1983. **Note: Resolution should be incorporated as part of an Appendix.**

Grocery Store (Major): An establishment which deals principally in a variety of food and general supplies for household uses. Characteristics of this type of establishment include a Building of large physical size, a high volume of business, and a wide variety of products.

~~Grocery Store~~ (Convenience): An establishment which deals principally in a limited selection of a variety of ~~convenience~~ **common** items including household goods, automobile supplies and dry goods. In addition, the Building in which such an establishment is housed is generally smaller and designed for easy access with an emphasis on serving the customer as quickly as possible.

Group Care Facility: A facility which provides services to seven (7) or more individuals of whom one or more are unrelated. These individuals are handicapped, aged, or disabled, are undergoing rehabilitation, and are provided services to meet their needs. This category includes uses that are licensed or supervised by any Federal, State, or County Health/Welfare Agency, or any group dwellings (all ages), halfway houses, nursing homes, resident schools,

resident facilities, and foster or boarding homes, so long as they provide care for seven (7) or more individuals.

Honorarium Sign: A plaque or small sign located so as to provide recognition of a donor for contributions given toward capital projects or specific improvements to existing facilities.

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

Inn: A commercial facility for the housing and feeding of transients. *(Revised 10/12/06)*

Livestock: Animals which are generally domesticated and confined to farms. Such animals shall include cattle, sheep, goats, swine, horses, mules, fish and poultry.

Loading Space, Off-Street: Space conveniently located for pickups and deliveries, scaled to the delivery vehicles expected to be used, and accessible to such vehicles even when required off-street parking spaces are filled.

Lodge: A building or group of buildings under single management containing both rooms and dwelling units available for temporary rental to transient individuals or families.

Lot: A parcel of land occupied or capable of being occupied by a main Building or group of main Buildings and accessory Buildings, together with such yards, open spaces, lot width and lot area as are required by this Ordinance, and having not less than the minimum required lot width upon a street, either shown on a plat of record, or considered as a unit of property and described by metes and bounds.

- 1) Lot, Corner: A lot located at the intersection of two or more streets or located where one street makes a sharp angle of eighty to one hundred and twenty degrees (80°-120°).
- 2) Lot, Double Frontage: A lot which has two street frontages; however, no corner lot shall qualify as a double frontage lot unless said corner lot has frontage on three or more streets.
- 3) Lot Frontage: The frontage of a lot shall be construed to be the portion nearest the street.
- 4) Lot, Interior: A lot which has frontage on only one (1) street other than an alley.

Lot Measurements:

- 1) Depth of a lot shall be considered to be the average of the distances from the front property line to the rear property line. Also see Section 614.

- 2) Width of a lot shall be considered to be the horizontal distance between side property lines measured at the projected front line of the principal Building or proposed principal Building.
- 3) All lot measurements shall be converted from slope to horizontal lines.

Lot of Record: A lot which is a part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds of Buncombe County, prior to the adoption of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this Ordinance.

Manufactured Home: A dwelling unit, transportable in one or more sections, which is NOT constructed in accordance with the standards of the North Carolina Uniform Residential Building Code for One- and Two-Family Dwellings, is eight feet or more in width and is 40 feet or more in length, and is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein.

Modular Home: A dwelling unit constructed in accordance with the construction standards of the North Carolina Uniform Residential Building Code for One- and Two-Family Dwellings and composed of components substantially assembled in a manufacturing plant and transported to the Building site for final assembly and placement on a permanent foundation. For the purposes of this Ordinance, modular homes shall be considered equivalent to site-built homes.

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

Municipal Government Facilities: Of or pertaining to activities associated with local municipal government operations including, but not limited to: administrative offices, public meeting facilities, Designated Critical Operations Area (DCOA) facilities, emergency communications facilities, fire protection service facilities, and public safety facilities.

Natural Grade: That slope of land which has been cleared, with no major disturbance of soil.

Nonconforming Lot(s). A lot of record that does not conform to the dimensional requirements of the zoning district in which it is located. The nonconformity may result from adoption of this Ordinance or any subsequent amendment.

Non-Conforming Structure: A Structure which does not conform with the requirements of the Zoning District in which it is situated, either at the effective date of this Ordinance or as the result of subsequent amendments to this Ordinance.

Non-Conforming Use: A legal use of a Building and/or land that antedates the adoption or future amendments of this Ordinance and does not conform to the requirements for the Zoning District in which it is located.

Nonconformity, Dimensional. A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

Nursery School: A privately owned and operated school designed to provide daytime care or instruction for two (2) or more preschool children, and operated on a regular basis. The term "nursery school" shall include the terms "day care center" and "child care center."

Open Storage: Unroofed storage areas, whether enclosed or not.

Overlay District: A Zoning District that adds requirements to the Zoning District over which it lies. Uses or proposed uses within an overlay District must comply with all requirements of both the overlay District and the underlying Zoning District. Where conflicts appear to exist between the requirements of the two Districts, the more restrictive requirement shall apply.

Park: A public facility for recreation, which may have commercial activities for recreational uses only.

Parking Space: A storage space of not less than nine feet (9') by eighteen (18') for one (1) automobile, plus the necessary access space. (See Section 900.2).

Planned Unit Development (PUD): An area of land under unified ownership or control to be developed and improved as a single entity under a master plan in accordance with and subject to the requirements of this Ordinance.

Portable Storage Container: A transportable, fully enclosed, box-like container that is designed for temporary storage of materials and/or equipment. Such containers are uniquely designed for their ease of loading to and from a transport vehicle and moved to various locations on demand. For the purposes of this Ordinance, the trailer portion of a tractor trailer shall be considered a portable storage container when expressly used for the purpose of on-site storage.

Potable Water Supply: A source of water that contains no objectionable pollution, contamination, minerals or infectious agents and is considered by the Town to be satisfactory for drinking.

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

Private Dormitory: A multiple unit residential accommodation which is established directly or indirectly, in association with a college, business college, trade school or university, for the purpose of housing students registered and attending such an institution. A private dormitory may contain food preparation and eating facilities primarily for the use of its occupants.

Professional Office: The office of persons performing professional services such as doctors, lawyers, architects, engineers, accountants, real estate brokers, and insurance salesmen.

Property Line: The legally established boundary of a lot, which boundary shall be considered coincident with any abutting public street right-of-way line unless the metes and bounds description contained in a recorded deed for a lot clearly and specifically establishes the lot boundary at some other location.

Public Works Maintenance Facility: A building or group of buildings designated to house equipment and materials stock utilized in the various activities associated with improvements to, and maintenance of, streets and public utility systems for the Town.

Regulated Tree: A Regulated Tree shall be any self-supporting woody perennial plant located within the right-of-way lines of any private property as established by the Town of Montreat, or twenty-five (25') feet of either side of the center line of any street, whichever is more restrictive. Further, all trees on public street rights-of-way or public property owned by the Town of Montreat shall be considered to be Regulated Trees.

Removal of a Regulated Tree: The cutting down of any Regulated Tree and all other acts which cause premature death or destruction of any Regulated Tree.

Religious Complex: A Building or group of Buildings for the purpose of religious worship including the sanctuary(s), education Building(s), recreation Building(s), child care facilities, and parsonage.

Right-of-Way: A dedicated or condemned strip of land reserved for a specific use, such as for a street or utility easement.

Setback: The distance from any property line to the closest edge of a Principal or Accessory Building.

Setback Line: A line establishing the minimum allowable distance between the nearest portion of any Principal or Accessory Building, excluding the outermost three feet (3') of any attached steps, roof, gutters and similar fixtures, and the property line when measured perpendicular thereto. Covered porches, whether enclosed or not, shall be considered as part of the Building and shall not extend beyond the setback line. Decks, whether free-standing or not, shall not extend beyond the setback line unless otherwise permitted in accordance with Section 612.4.

Senior Citizens' Center: A privately or publicly owned and operated facility designed to provide daytime care and/or instruction for two (2) or more senior citizens, and operated on a regular basis.

Sign: Any words, lettering, numerals, parts of letters or numerals, figures, phrases, sentences, emblems, devices, designs, trade names or trademarks by which anything is made known, including any surface fabric or other material or Structure designed to carry such devices, such as are used to designate or attract attention to an individual, a firm, an association, a corporation, a profession, a business, or a commodity or product, which is exposed to public view and used to attract attention. This definition shall not include the flag, badge, or insignia of any governmental unit. (See Article X)

Special Use Permit: A permit issued by the Board of Adjustment that authorizes the recipient to make use of property in accordance with the requirements of this Ordinance or as well as any additional requirements imposed by the Board of Adjustment.

Street: A dedicated right-of-way for vehicular traffic which affords the principal means of access to abutting property.

Street Line: The dividing line between a street right-of-way and the contiguous property.

Structure: Anything constructed or erected, the use of which requires permanent location on the ground, or attachment to something having a permanent location on the ground, including decks, retaining walls, exterior stairways, fences, and business signs.

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

Subdivision: All divisions of a tract or parcel of land into two (2) or more lots, Building sites, or other divisions for the purposes of sale or Building development (whether immediate or future) including all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Section:

- 1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the Town as shown in the Subdivision Regulations;
- 2) The division of land into parcels greater than ten (10) acres where no new street right-of-way dedication is involved;
- 3) The public acquisition by purchase of strips of land for the widening or opening of streets or other public uses; and
- 4) The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way

dedication is involved and where the resultant lots are equal to or exceed the standards of the Town as shown in the Subdivision Regulations.

Support: Any Structure that an antenna is connected to which is intended to provide structural competency. Support shall include any associated guy wires, poles, beams, foundations, anchors or other devices which attach antenna to the ground or to a Structure capable of accommodating additional engineering demands resulting from antenna and support parts.

Swimming Pool: A water-filled enclosure, permanently constructed or portable, having a depth of more than eighteen inches below the level of the surrounding land, or an above-surface pool, having a depth of more than thirty inches, designed, used and maintained for swimming and bathing purposes.

Trailer: Any vehicle or Structure capable of moving or being moved, over street and highways on its own wheels or on flat beds or other carriers, which is designed to be utilized to:

- 1) Provide temporary quarters for the conduct of a business, profession, trade or occupation; or
- 2) Serve as a carrier of people, new or used goods, products, or equipment;

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

Use by Right: A use that is primary and is permitted as a matter of right on any lot within a Zoning District as expressly listed in Section 700 of this Ordinance.

Variance: An exception to the terms of the Zoning Ordinance as authorized in Section 1203 B. As used in this Ordinance, a Variance is authorized only for height, area, and size of Structure of size of yards and open spaces (See Section 1204 for Variance Application Process).

Visible: Capable of being seen without visual aid by a person of normal visual acuity.

Wayfinding: Signs, maps, and other graphic or audible methods used to convey location and directions to travelers, normally consisting of roadside structures, informational kiosks or other visual means of providing orientation.

Yard: A space on the same lot with a principal Building which is open, unoccupied, and unobstructed by Buildings or Structures from ground to sky except where encroachments are expressly permitted.

- 1) Minimum Front Yard: A required open space on the same lot with a principal Building, between the front setback line and the front property line and extending the full width of the lot.

- 2) Minimum Rear Yard: A required open space on the same lot with a principal Building between the rear setback line of the Building and the rear property line extending the full width of the lot.
- 3) Minimum Side Yard: A required open space on the same lot with a principal Building between the side setback line of the Building and the side property line of the lot and extending from the front property line to the rear property line.

Zoning Official Administrator: The officer or other designated authority charged with the administration and enforcement of this Ordinance.

Zoning District: The term applied to various geographical areas of the Town of Montreat for the purpose of interpreting the provisions of the Ordinance. The Zoning Districts are designated with the use of symbols on the Official Zoning Map. Regulations controlling land use in the various Zoning Districts within the Town of Montreat are set forth in Article VII of this Ordinance.

Figure 1. Yards and Setbacks **Good idea, but should be with standards.**

Coates' Canons Blog: Regulation of Short-Term Rentals and the Effect of S.L. 2019-73

By Rebecca Badgett

Article: <https://canons.sog.unc.edu/regulation-of-short-term-rentals-and-the-effect-of-s-l-2019-73/>

This entry was posted on September 09, 2019 and is filed under General Local Government (Miscellaneous), Land Use & Code Enforcement

Chris McLaughlin and I are excited to announce that our publication *Regulation and Taxation of Short-Term Rentals* is available for purchase through the SOG website. This publication is aimed at helping local governments decide how to address the growing issue of short-term rentals by analyzing the legal and practical aspects of local government regulation and taxation and by offering advice on best practices for regulation.

In addition, on January 9, 2020, we are offering a 1-day course that covers the basics of short-term rental regulation and the occupancy tax. You can register for the course [here](#).

Shortly after our book was released, the legislature adopted S.L. 2019-73 (S.B. 483), which extends the periodic inspection statutes to cover properties subject to the North Carolina Vacation Rental Act (G.S. Chapter 42A). Because STRs are clearly subject to the Vacation Rental Act, we now know that STRs are also subject to the periodic inspection statutes. This change limits the ability of local governments to regulate STRs using their housing code enforcement authority. However, absent additional legislation on this issue, we believe that local governments retain their ability to regulate STRs using their zoning authority.

What are the Periodic Inspection Statutes?

Local government inspection departments have a history of establishing residential rental property inspection, permit, and registration (IRP) programs. Tyler Mulligan's blog explores IRP programs in greater detail. Pursuant to G.S. 153A-364 and 160A-424, both cities and counties may perform periodic inspections for hazardous and unlawful conditions in buildings and residential structures if there is reasonable cause to believe that there are unsafe, hazardous, or unlawful conditions therein.

In addition, the statutes also prohibit a local government from:

- adopting or enforcing an ordinance that requires an owner or manager of residential rental property to obtain any permit or permission to lease, rent, or register rental property absent certain exceptions;
- requiring an owner or manager of residential rental property to enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy; and
- levying a special fee or tax on residential rental property that is not also levied against other commercial and residential properties.

Effect of S.L. 2019-73 on Local Government Regulation

The limitations outlined above may appear to invalidate local government authority to regulate STRs. After all, the statutes prohibit periodic inspections without reasonable cause and make it unlawful to adopt an ordinance that requires STR owners or operators to register a property or obtain a permit. However, the periodic inspection statutes are aimed only at housing code regulation and enforcement, not land use law enforcement. This is evidenced by the fact that the provisions of the periodic inspection statutes have been recodified to the article on Minimum Housing Code authority in the upcoming re-organization and recodification of the planning and development regulation statutes (see G.S. Article 12 at 160D-12-7). This means that the periodic inspection statutes apply to residential rental properties in the context of housing code enforcement.



The statutes do not divest local governments of their authority to use land use and development regulations to regulate different land uses. Through zoning, local governments commonly define a land use, set reasonable development standards for that use, and require some level of permitting. For example, B&B's are often regulated as a separate land use. A local government can restrict B&B's to certain zoning districts, require owners to obtain zoning permits, and set operational guidelines, such as requiring parking capacity or limiting occupancy.

Until the law holds otherwise, we believe that local governments may use zoning to regulate short-term rentals. Thus, local governments may adopt reasonable development standards for this land use, just as they do for other types of lodging establishments. *Regulation and Taxation of Short-Term Rentals* provides additional information about STR regulations for those local governments considering whether to regulate this land use.

Links

- www.sog.unc.edu/publications/books/regulation-and-taxation-short-term-rentals
- www.sog.unc.edu/courses/short-term-rental-workshop

Legislative Update to *Regulation and Taxation of Short-Term Rentals*

by Rebecca L. Badgett and Christopher B. McLaughlin

Summary

In Section II, Part B of *Regulation and Taxation of Short-Term Rentals*, the authors advised that the periodic inspections statutes (G.S. 153A-364 and 160A-424) do not govern short-term rentals (STRs) due to the transient nature of the tenancy associated with these properties.¹ However, thanks to a recent change in the law, the authors' advice on this issue is no longer accurate. S.L. 2019-73 (S.B. 483), effective July 1, 2019, explicitly extends the periodic inspection statutes to cover properties subject to the North Carolina Vacation Rental Act (G.S. Chapter 42A). Because STRs are clearly subject to the Vacation Rental Act, STRs are now also subject to the periodic inspection statutes. This change essentially eliminates the ability of local governments to regulate STRs using their housing code enforcement authority. However, absent additional legislation on this issue, the authors believe that local governments retain their ability to regulate STRs using their zoning authority.

Background

What Is the Vacation Rental Act?

The North Carolina Vacation Rental Act was enacted to regulate the interests of landlords, real estate brokers, and tenants when property owners rent private residences to tourists for vacation, leisure, or recreational purposes for fewer than ninety days. The Act broadly defines the types of "residential property" it covers to include "an apartment, condominium, single-family home, townhouse, cottage, or other property that is devoted to residential use or occupancy by one or more persons for a definite or indefinite period."²

Short-term rentals offered by homeowners or property management companies, or advertised on platforms such as Airbnb, VRBO, and HomeAway, certainly fall within the scope of the Vacation Rental Act. And with the enactment of S.L. 2019-73, the legislature has clarified that STRs fall within the scope of the periodic inspection statutes.

What Are the Periodic Inspection Statutes?

Local government inspection departments have a history of establishing residential rental property inspection, permit, and registration (IRP) programs.³ Pursuant to G.S. 153A-364 and 160A-424, both cities and counties may perform periodic inspections for hazardous and unlawful conditions in buildings and residential structures if there is reasonable cause to believe that there are unsafe, hazardous, or unlawful conditions therein.

The statutes also prohibit a local government from

¹ REBECCA L. BADGETT & CHRISTOPHER B. MCLAUGHLIN, *REGULATION AND TAXATION OF SHORT-TERM RENTALS* 9–10 (UNC School of Government, 2019).

² G.S. 42A-4(2).

³ C. Tyler Mulligan, *Residential Rental Property Inspections, Permits, and Registration: Changes for 2017*, CMTY & ECON. DEV. BULL. No. 9 (Mar. 21, 2017).

- adopting or enforcing an ordinance that requires an owner or manager of residential rental property to obtain any permit or permission to lease, rent, or register rental property absent certain exceptions;⁴
- requiring an owner or manager of residential rental property to enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy; and
- levying a special fee or tax on residential rental property that is not also levied against other commercial and residential properties.⁵

Effect of S.L. 2019-73 on Local Government Regulation

The limitations outlined above may appear to invalidate local government authority to regulate STRs. After all, the statutes prohibit periodic inspections without reasonable cause and make it unlawful to adopt an ordinance that requires STR owners or operators to register a property or obtain a permit. However, the periodic inspection statutes are aimed only at housing code regulation and enforcement, not land use law enforcement. This is evidenced by the fact that the provisions of the periodic inspection statutes have been recodified to the article on Minimum Housing Code authority in the upcoming re-organization and recodification of the planning and development regulation statutes (see G.S. Article 12 at 160D-12-7). This means that the periodic inspection statutes apply to residential rental properties in the context of housing code enforcement.

The statutes do not divest local governments of their authority to use land use and development regulations to regulate different land uses. Through zoning, local governments commonly define a land use, set reasonable development standards for that use, and require some level of permitting. For example, B&Bs are often regulated as a separate land use. A local government can restrict B&Bs to certain zoning districts, require owners to obtain zoning permits, and set operational guidelines, such as requiring parking capacity or limiting occupancy.

Similarly, a logical argument can be made that local governments may use zoning to regulate short-term rentals. The fact that the Vacation Rental Act separately defines “vacation rentals” provides additional support for the argument that STRs (i.e., vacation rentals) may be regulated as a distinct land use within a jurisdiction. As with other land uses, zoning approval may be required to authorize this use. Therefore, while the periodic inspection statutes would invalidate a law requiring an STR owner to obtain a permit or register a property for the sole purpose of monitoring the location of STRs or for the purpose of levying a special tax on these properties, a requirement to obtain a zoning permit to allow an STR to operate in a residential zoning district is likely permissible.⁶ Local governments may also adopt

⁴ An owner of residential rental property may be required to register with a city if any of the following conditions are met: (1) the rental unit(s) have more than four verified violations of the housing code in a rolling twelve-month period, (2) the rental unit(s) have two or more verified violations of the housing code in a thirty-day period, or (3) the property has been identified as falling within the top 10 percent of properties with crime or disorder problems as defined by local ordinance.

⁵ G.S. 153A-364(c), 160A-424(c). Subsection (c) of these statutes also prohibits local governments from requiring an owner or manager of residential rental property to (1) enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy or (2) obtain an inspection before the owner or manager can receive a utility service. This section mandates that a violation of a rental registration ordinance cannot be punishable as a criminal offense.

⁶ Future legislation related to local government authority to regulate STRs or judicial interpretation of S.L. 2019-73 could alter the authors’ advice.

reasonable development standards for this land use, just as they do for other types of lodging establishments. *Regulation and Taxation of Short-Term Rentals* provides additional information about STR regulations for those local governments considering whether to regulate this land use.

-----12 Conditional Zoning District

In addition to the general zoning districts delineated above, a Conditional Zoning District (bearing the designation CZ) corresponding to the general use zoning districts may be established as authorized in this ordinance. Accordingly, the following conditional zoning districts may be designated upon approval by the Town Board of Commissioners of a petition to establish a conditional zoning district:

- R-1: (CZ) Low Density Residential District
- R-2: (CZ) Medium Density Residential District
- R-3: (CZ) Low Density Residential District
- I/R: (CZ) Institutional/Residential District
- I: (CZ) Institutional District

Conditional Zoning Districts are districts that correspond to the general use zoning districts in which the development and use of the property is subject to conditions imposed as part of the legislative decision creating the district in addition to the standards and regulations in the corresponding general use zoning district.

Conditional Zoning Districts (bearing the designation CZ) correspond to the general use zoning districts as authorized in this ordinance.

-----13 Purpose

Conditional Zoning Districts are primarily intended to allow for the zoning and development of property in accordance with general use zoning district standards and additional conditions that enable the use and development to fit better with the site and neighboring properties.

The review process established in this Ordinance provides for accommodation of such development by a reclassification of property into a conditional zoning district, subject to specific conditions, which promote compatibility of the use with neighboring properties. Zoning petitions to establish a conditional zoning district will be processed in accordance with the provisions of **Article -----** through **Article ----** for zoning amendments as well as this section. A conditional zoning district classification will be considered only if the application is made by the owner of the property or his/her authorized agent.

-----14 Uses within District

Within a conditional zoning district, only those uses listed (or determined to be equivalent uses) as permitted uses in the corresponding general zoning district shall be permitted. Individual conditions and site specific standards are limited to those needed to bring a project into compliance with town ordinances and adopted plans. The applicant shall propose development standards to mitigate the impacts reasonably expected to be generated, especially with regard to property adjacent to the conditional zoning district.

-----**.15 Conditions**

(A) In a conditional zoning district, conditions may specify the uses proposed for the district; the location on the property of the proposed use; the number of dwelling units; the location and extent of supporting facilities such as parking areas, driveways, and access streets; design elements of the proposed use; the location and extent of buffer areas and other special purpose areas; the timing of development; the location and extent of right-of-way and other areas to be dedicated for public purposes; the alteration of streets to mitigate traffic and environmental impacts; use limitations; and other matters the applicant proposes as conditions upon the request.

(B) In approving a reclassification of property to a conditional zoning district, the Town Board of Commissioners may request that reasonable and appropriate conditions be attached to approval of the rezoning. Any such conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation, screening and buffer areas, the timing of development, street and right-of-way improvements, water and sewer improvements, stormwater, the provision of open space, and other matters that the Town Board of Commissioners may find appropriate or the applicant may propose.

(C) Such conditions to approval of the rezoning may include dedication to the Town or State or a recognized legal entity, as appropriate, of any rights-of-way or easements for roads, water, and sewer or other public utilities necessary to serve the proposed development. The applicant shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the Town Board of Commissioners.

(D) Before filing an application for a conditional zoning district, the application(s) is encouraged to meet with the Zoning Administrator to discuss the nature of the proposed reclassification, the standards for development under the existing and proposed classifications, and concerns that persons residing in the vicinity of the property may have regarding the proposed reclassification, if known.

(E) All applications must include an exhibit map/schematic plan drawn to scale and supporting text which will become a part of the ordinance amendment. The applicant should include at least the items listed below:

(1) An exhibit map/schematic plan/site plan drawn to scale showing the total acreage, present zoning classifications and uses for the subject property and adjacent properties, date, and north arrow.

(2) The owners' names, addresses, and the tax parcel numbers of all adjoining properties.

(3) All existing easements, reservations, and rights-of way, and all yards required for the conditional zoning district requested.

(4) Delineation of areas within the regulatory floodplain as shown on official Flood Hazard Boundary Maps for the Town of Montreat including delineation of streams and associated stream buffers.

(5) Proposed uses of land and structures. For residential uses this should include the number of units and an outline of area where the structure will be located and appropriate setbacks. For nonresidential uses, this should include the approximate square footage of all structures and an outline of the area where the structures will be located.

(F) Additional requirements. When dealing with the conditional zoning district process, it may be desirable to request additional information in order to evaluate a proposed use and its relationship to the surrounding area. Therefore, the Planning and Zoning Commission and/or Town Board of Commissioners may request additional information as they deem necessary. This information may include but is not limited to the items listed below:

(1) Proposed screening, including walls, fences, or planting areas as well as treatment of any existing natural features.

(2) Existing and proposed topography at two-foot contour intervals or less.

(3) Generalized information on the number, height, and size or, in especially critical situations, the location of structures.

(4) Proposed number and location of detached signs

(5) Approximate completion time of the project and proposed phasing, if any.

(6) A transportation plan with provisions for internal vehicular, transit, bicycle, and pedestrian circulation and parking.

(7) Conditions proposed to be incorporated in the conditional zoning district.

(G) In approving a conditional zoning district, the Town Board of Commissioners may, with agreement of the applicant, impose more restrictive requirements than would otherwise be required by this ordinance and those in the application, as deemed necessary to ensure that the purposes and intent of this ordinance are met.

(H) A new public hearing is required for consideration of a substantial change in conditions, as determined by the Planning Director.

(I) No condition on a conditional zoning district application may have the effect of removing or amending any requirement of this ordinance.

(J) Other than use conditions, no proposed condition can be a mere repetition of an already applicable requirement of this ordinance. The Planning Director may order the removal of any such condition.

(K) Prior to the issuance of any permits, the applicant must submit detailed plans to the Zoning Administrator for final review and approval.

(L) At the request of the applicant, an exhibit map/schematic plan may also serve as a site plan or preliminary plat. Such plan shall comply with both exhibit map/schematic plan and site plan or preliminary plat requirements, as applicable, and shall undergo one review process. Where an exhibit map/schematic plan also serves as a site plan or preliminary plat, any associated special use permit requirement shall be waived.

-----16 Community Meeting

Applicable to the Institutional/ Residential (I/R) and the Institutional (I) districts, the applicant is required to hold a community meeting prior to the application deadline for a conditional zoning district rezoning. The applicant shall provide proof of mailed notice of the meeting. Notice of the meeting shall be provided to owners of abutting property, as listed with the Buncombe County Tax Department, and include properties directly across a street, easement or public or private right of way, and within 300 feet of the property. Notice may be sent to additional properties by the applicant. At a minimum, the notice shall be sent by standard mail and be postmarked at least fourteen (14) days

prior to the date of the community meeting. Additional types of public notice may be provided by the applicant.

(A) A written report of the community meeting shall be included as part of the application packet. The written report of the meeting shall include a listing of those persons and organizations contacted about the meeting and the manner and date of contact, the time, date, and location of the meeting, and a description of any changes to the rezoning application made by the applicant a result of the meeting.

(B) Revisions to an approved Conditional Zoning District necessitating a Public Hearing shall also require a community meeting.

-----**.16 Scope of Approval**

(A) Any conditions approved in association with a Conditional Zoning District and so authorized shall be perpetually binding unless subsequently changed or amended as provided for in this Article. The applicant shall obtain certification of the approval of the Conditional Zoning District from the Town Clerk and shall record the certification and accompanying map exhibit/site plan in the office of the Register of Deeds of Buncombe County. The applicant shall return a certified copy of the recorded documents to the Town Clerk.

(B) If for any reason any condition established pursuant to these regulations is found to be illegal or invalid, or if the applicant should fail to accept any condition, the approval of the Conditional Zoning District may be deemed null and void and the governing body may initiate proceedings to rezone the property to its previous zoning classification. Continued or repeated violations of the conditions in an approved Conditional Zoning District shall constitute an applicant's failure to accept said conditions.

(C) Any violations of a condition in an approved Conditional Zoning District shall be treated the same as any other violation of this Ordinance and shall be subject to the same remedies and penalties as any such violation.

(D) The approval of a zoning map or text amendment does not authorize any development activity. Application for a Certificate of Zoning Compliance and any other administrative permits required by this ordinance shall be required.

(E) If an application for conditional zoning is approved, the development and use of the property shall be governed by the existing ordinance requirements applicable to the district's classification, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall

constitute the zoning regulations for approved district and are binding on the property as an amendment to these regulations and the zoning maps.

(F) If an application is approved, only those uses and structure indicated in the approved application and exhibit map/schematic plan shall be allowed on the subject property. A change of location of any structures may be authorized pursuant to applicable provisions of the ordinance.

(G) Following the approval of a rezoning application for a conditional zoning district, the subject property shall be identified on the Zoning Map by the appropriate district designation.

(H) Any Approval conditional zoning district shall have vested rights.

-----**.17 Alterations to Approval**

(A) Except as provided herein, changes to an approved conditional zoning district or to the conditions attached to the approval shall be treated the same as a new application for a conditional zoning district and shall be processed in accordance with the original procedures.

(B) The Planning and Zoning Commission shall have the authority to approve an administrative change to an approved conditional zoning district application. The standard for approving or denying such a requested change shall be that the change does not significantly alter the approved plan or its conditions and that the change does not have a significant impact upon abutting properties. Changes that increase the intensity of nonresidential development up to 10% of the approved building square footage, but not more than 5,000 square feet, may be considered. For residential development, increases in density are not allowed as an administrative change.

(C) The Planning and Zoning Commission shall always have the discretion to decline to exercise this delegated authority if it believes a requested change should be deemed a rezoning application with a public hearing and Town Board of Commissioners under the circumstances. If the Planning and Zoning Commission declines to exercise this authority, then the applicant can only file a rezoning application with a public hearing and Town Board of Commissioners decision.

**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 10. 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.