

# ZONING ORDINANCE

## TOWN OF MONTREAT

### NORTH CAROLINA

Prepared by the Planning and Zoning  
Commission

**Adopted June 10, 2021 by the Board of Commissioners**

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# ARTICLE 1 – GENERAL PROVISIONS

- 100    **Authority and Enactment.** Pursuant to the authority conferred by the North Carolina General Statutes Chapter 160D, the Board of Commissioners of the Town of Montreat, North Carolina, does hereby adopt this Ordinance: (a) establishing comprehensive zoning regulations for the Town of Montreat, a municipal corporation of the state of North Carolina, (b) providing for the administration, enforcement and amendment thereof, in accordance with the provisions of the North Carolina General Statutes, Chapter 160D, and (c) repealing all ordinances in conflict herewith, to be effective upon adoption.
- 101    **Title.** This Ordinance (herein the “Ordinance”) shall be known and may be cited as The Zoning Ordinance of the Town of Montreat, North Carolina.
- 102    **Effective Date.** The revisions of this Ordinance, including the Zoning Map, shall become effective **June 18, 2021.**
- 103    **Jurisdiction.** The provisions of this Ordinance shall apply within the corporate limits of the Town of Montreat and within the adjacent Extraterritorial Jurisdiction (ETJ).
- 104    **Purpose.** This Ordinance has been adopted in accordance with the Comprehensive Plan for the Town of Montreat for the following purposes: to promote the public health, safety and general welfare; to accomplish a coordinated, balanced, and harmonious development of the land within the corporate limits of the Town of Montreat and the regulatory domain of the Extraterritorial Jurisdiction (ETJ); to provide for efficiency and economy in the process of development; to prevent the overcrowding of land; and to promote desirable living conditions and the sustained stability of neighborhoods; and to protect property against blight and depreciation.
- 105    **Priority and Precedence of Ordinance.** If provisions of the Zoning Ordinances are inconsistent with one another, or with provisions of other Ordinances of the Town, the more restrictive provision shall govern, except when the less restrictive provision is more specific in its applicability than the more restrictive provision or when it can be reasonably inferred that the less restrictive provision is intended to apply instead of, or as an exception to the more restrictive provision. If a federal or state law or regulation imposes a lesser limitation or requirement, this Ordinance shall govern. If a federal or state law or regulation imposes a more restrictive or greater limitation or requirement, the provisions

of such federal or state law or regulation shall govern. If limitations or restrictions are imposed by third party agreement or declaration of restrictions or covenants, the provisions of the Zoning Ordinances shall nevertheless apply, but nothing herein shall affect the applicability or enforceability of such third party agreement or declaration of restrictions or covenants as between the parties affected thereby.

106 **Relationship to the Comprehensive Plan.** The Board of Commissioners has adopted the Town of Montreat Comprehensive Plan setting forth the goals, policies and programs intended to guide the present and future development of the Town. It is the intention of the Town Board of Commissioners that this Ordinance implement the planning policies adopted by the Board as reflected in the Comprehensive Plan and other planning documents. While the Town Board of Commissioners reaffirms its commitment that this Ordinance and any amendment to it be in conformity with adopted planning policies, the Town Board of Commissioners hereby expresses its intent that neither this Ordinance nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document.

When acting on any proposed zoning amendment, the Board of Commissioners shall carefully consider its adopted Comprehensive Plan and shall approve a brief statement describing whether its action is consistent with the adopted Comprehensive Plan. In addition, when considering proposed amendments to the Ordinance or the Zoning Map, the Planning and Zoning Commission shall note in written statements whether such amendment is consistent with such Comprehensive Plan.

107 **No Use of Land or Buildings Except in Conformity with Ordinance Provisions.** Subject to **Article X** of this Ordinance (Non-conformities), no person shall use or occupy any land or Buildings, or authorize or permit the use of land or Buildings except in conformity with this Ordinance. For purposes of this section, the "use" or "occupation" of Building or land relates to anything and everything that is done to, on, or in the Building or land.

No Building or land shall hereafter be used or occupied, and no Building or part thereof shall be erected, moved or structurally altered, except in conformity with this ordinance, or amendments thereto, for the District in which it is located. In all Districts, every main Building hereafter erected or altered shall be located on a separate Lot, as defined in this ordinance, and in no case shall there be more than one main Building and permitted Accessory Buildings on the Lot; provided that this requirement shall not apply to Multi-Family developments, Planned Unit Developments (PUDS), or certain Special Uses, nor to a bona fide rural farm Use.

Uses not designated as permitted by right or subject to additional conditions, shall be prohibited. Special Uses are permitted upon compliance with the additional regulations imposed by this Ordinance or the appropriate governing board.

- 108 **Fees.** Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for zoning permits, sign permits, Special Use Permits, zoning amendments, Variances and other administrative relief. The amount of the fees charged shall be as set forth in the Town budget or as established by resolution of the Town Board of Commissioners and available from the Town Clerk. Fees established in accordance with the Town's fee schedule shall be paid upon submission of a signed application or notice of appeal, as the case may be.
- 109 **Responsibility for Administration and Enforcement.** The Zoning Administrator is charged with the responsibility for interpretation, administration and enforcement of this Ordinance.
- 110 **Severability.** The sections, paragraphs, sentences, clauses and phrases of this ordinance are severable. If any such section, paragraph, sentence, clause or phrase is declared unconstitutional or otherwise invalid by any court or competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses or phrases of this ordinance since the same would have been enacted without the incorporation into this ordinance of such unconstitutional or invalid section, paragraph, sentence, clause or phrase.

# ARTICLE II – DEFINITIONS

200 **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:

200.1 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;

200.2 The word "shall" is always mandatory;

200.3 The word "may" is permissive;

200.4 The word "Lot" includes the word "plot" or "parcel";

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

200.6 The word "used" or "occupied" 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;

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

200.8 The term "Planning Commission" refers to the Montreat Planning and Zoning Commission. The terms "Town Commissioners", "Town Board of Commissioners", "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.

200.9 Other specific terms are defined in pertinent provisions of this Ordinance (For example see Section 301.1)

## 201 **Definitions**

**Accessibility Feature:** A pedestrian means of access from the parking/passenger loading area of a Building to the Building entrance, in the form of a Structure and/or attached Building appurtenance, which provides an increased level of accessibility for Building occupants or members of the public. 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.

**Battery-Charged Security Fence:** An alarm system and ancillary components, or equipment attached to that system, including a fence, a battery-operated energizer that is intended to periodically deliver voltage impulses to the fence, and a battery charging device used exclusively to charge the battery.

**Bed and Breakfast:** An owner-occupied lodging establishment, located in what would ordinarily be considered a Single-Family Dwelling, in which overnight lodging is provided for the general public and in which a breakfast is served to overnight guests.

**Boarding House:** A Dwelling Unit or part thereof where, for compensation, lodging and meals are provided, in which the occupants share a kitchen and no kitchens are located in individual rooms.

**Buffer:** An area of natural or planted vegetation, typically established to separate types of uses or to provide a protected or vegetative area for environmental or aesthetic purposes.

**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.

**Building:** Any Structure, fully or partially enclosed, and constructed or used for residence, business, industry or other public or private purposes, or purposes accessory thereto, including without limitation tents, Trailers, Manufactured Homes, Modular 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 as separate Structures.



Building Height: The vertical distance measured from the Average Natural Grade of the applicable Lot to the highest point of the roofline of the applicable Building, or from the top of the parapet or roof surface for flat-roofed Buildings.

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

Certificate of Zoning Compliance: A document issued by the Zoning Administrator certifying that plans submitted in accordance with Section 301 conform to the provisions of the Zoning Ordinance.

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

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

Comprehensive Plan: A plan that sets forth goals, policies and programs intended to guide the present and future physical, social and economic development of the jurisdiction, as adopted by the Board of Commissioners on April 10, 2008 by Resolution 08-04-001, as amended.

Convenience Store: A retail establishment which deals principally in a limited selection of common items including without limitation food, household goods, automobile supplies, beverages, and packaged goods. In addition, the Building in which such an establishment is housed is generally smaller and typically designed for easy vehicular access with an emphasis on serving the customer as quickly as possible.

Day Care Center: A Day Care Center includes child day care facilities, family childcare homes, and any other childcare facility for three or more pre-school aged children as defined in N.C.G.S. Section 110-86(3). The term also includes a center providing day care on a regular basis for more than two hours per day for four or more adults in accordance with N.C.G.S. Section 131D-6.

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

Dedication: The voluntary donation of land or an Easement over, under, across, and/or through a parcel of land by the owner thereof for use by the public and the acceptance of the offer of dedication by the Town as evidenced by the recording of a legal instrument in the Office of the Register of Deeds for the county in which the land is located.

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 measured four and one-half feet (4.5') 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 or staff of a college, boarding school, conference center, monastery or other similar institutional Use. Dormitories may contain common, shared kitchen facilities and bathrooms but shall not contain individual kitchen facilities.

Dwelling: Any Building, or portion thereof, containing sleeping, kitchen and bathroom facilities, and which is designed and/or used for living and sleeping purposes for one or more Families.

Dwelling Unit: A Dwelling designed and used, or held ready for use, as a permanent, separate residence for one (1) Family only.

Dwelling Unit, Accessory: A residential Dwelling Unit (i) located on the same Lot as a Single-Family Dwelling Unit, either as a separate Structure, an attached extension, or located within the principal Dwelling Unit; (ii) set up as a separate, complete housekeeping unit; and (iii) subordinate to the principal Single-Family Dwelling . Accessory Dwelling Units are permitted in accordance with and subject to Section 619.

Dwelling, Multi-Family: A single, detached Building, other than a Manufactured Home, containing three (3) or more separate Dwelling Units.

Dwelling, Single-Family: A single, detached Building, other than a Manufactured Home, containing one (1) Dwelling Unit.

Dwelling, Two-Family (Duplex): A single, detached Building, other than a Manufactured Home, containing two (2) separate Dwelling units.

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: A Building 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 and counseling centers.

Extraterritorial Jurisdiction (also referred to as “ETJ”): The area beyond the corporate limits of the Town over which the Town exercises planning and development powers in accordance with N.C.G.S. 160D-202. A portion of the ETJ lies in Buncombe County and a portion of the ETJ lies in McDowell County.

Family: One or more persons living together as a single housekeeping unit; provided, however, that unless all such persons are related by blood, adoption, marriage, legal guardianship or other such legal family relationship, then such housekeeping unit shall contain no more than four (4) unrelated persons, unless specifically allowed by other provisions of this ordinance.

Family Care Home: A home meeting the North Carolina Residential Building Code requirements with support and supervisory personnel that provides room and board, personal care and habilitation services in a Family environment for not more than six resident persons with disabilities, pursuant to N.C.G.S. Section 160D-907.

Farm, Bona Fide: Agricultural activities as set forth in N.C.G.S. Section 160D-903.

Fence: A physical barrier or enclosure intended to prevent escape or intrusion or to mark a boundary.

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.

Floor Area, Gross: The sum of the gross horizontal areas of the several floors of a Building measured from the interior 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 (6’).

Floor Area, Net: The Gross Floor Area of a Building less and excluding the floor areas of such Building attributable to stairwells, elevator shafts, equipment rooms, interior vehicular parking or loading areas, and all floors below the first or ground floor, except where such floors are used or intended to be used for residential, business, commercial, institutional or governmental purposes.

Front Building Line: A line which runs parallel to the Street which a Lot faces and extends from one side Property Line across the Lot to the other side Property Line. The location of such Front Building Line shall be determined as specified in Section 512. The Principal Building on a Lot shall be no closer to the Street than the Front Building Line. 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, Commercial: Any Building, or portion of a Building, which for consideration is used for storage, repair, rental, maintenance, servicing, washing, adjusting, or equipping of automobiles or other vehicles.

Greenspace: Land dedicated to and accepted by the Town that is designated for recreation, fishing, natural areas, and beautification of the Town as defined by the "Greenspace Resolution" adopted by the Town Commission on May 12, 1983, recorded in Book 1443 at Page 144 in the Office of the Register of Deeds for Buncombe County, North Carolina.

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, 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.

Home Occupation: Any Use conducted entirely within a Dwelling or an Accessory Building and carried on by the occupants thereof (and up to one non-occupant employee), 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 621.

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.

Hotel: A Building or Buildings in which sleeping accommodations are provided and offered to the public for compensation, in which the rooms are usually occupied singularly for rent, and in which there is usually a kitchen and public dining room for the preparation and service of meals. The term Hotel includes "lodges", "inns" and "motels".

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.

Lot: A parcel of land occupied or capable of being occupied by a Principal Building 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 Lot Frontage on two separate streets. A Corner Lot shall qualify as a Double Frontage Lot if said Corner Lot has frontage on three or more Streets.
- 3) Lot Frontage: The portion of a Lot that abuts a public Street or right of way (but not an Alley).
- 4) Lot, Interior: A Lot which has only one (1) Lot Frontage.

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.
- 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.

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, 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 (20’);
- (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.

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 purposes of this Ordinance Modular Homes shall be considered equivalent to site-built homes.

Municipal Government Facilities: Facilities used for or pertaining to activities associated with local municipal government operations including, but not limited to: administrative offices, public meeting facilities, emergency communications facilities, fire protection service facilities, and public safety facilities.

Natural Grade: The existing slope of land which may be cleared, but with no major disturbance of soil, prior to grading, excavation or filling.

Natural Grade, (Average): The average of the Natural Grade elevations at the four points on a Lot at which the front and rear yard Setback Lines intersect with the two side yard Setback Lines.

Nonconforming Lot: 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.

Nonconforming Structure: A Structure that does not conform to the requirements of the Zoning District in which it is located. The nonconformity may result from adoption of this Ordinance or any subsequent amendment.

Nonconforming Use: A Use of a Building and/or land that does not conform to the requirements of the Zoning District in which it is located. The nonconformity may result from adoption of this Ordinance or any subsequent amendment.

Notice of Violation: A written notification from the Zoning Administrator that there is a violation of the provisions of this Ordinance.

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 an Overlay District and its underlying Zoning District, the more restrictive requirements shall apply.

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

Parking Space: A vehicle space of not less than nine feet (9') by eighteen feet (18') for one (1) automobile, plus the necessary access space. (See Section 701.1).

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.

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

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 utilized in the various activities associated with improvements to, and maintenance of, Streets and public utility systems for the Town.

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 point of a Principal or Accessory Building.

Setback Line: A line establishing the minimum allowable distance between an applicable Property Line (that is, front, side or rear Property Line) and the nearest portion of any Principal or Accessory Building, excluding the outermost four feet (4') of any attached steps, roof, gutters and similar fixtures. 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 606.4.

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 VIII)

Special 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 Special Use.



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 and 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 Signs provided, however, for the purpose of Setback and minimum Yard requirements neither a driveway (including associated guardrails), a walkway (including associated steps and railings), an elevated boardwalk, a retaining wall, nor a fence shall be considered a Structure. Accessibility Features approved pursuant to Section 606.4 and also signs complying with the requirements and limitations of this Ordinance shall not be considered a Structure for the purpose of Setback and minimum Yard requirements.

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

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 (30) inches, designed, used and maintained for swimming and bathing purposes.

Trailer: Any vehicle or Structure capable of moving or being moved, over Streets 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.

Variance: An exception to the terms of the Zoning Ordinance as authorized in Section 310.42. As used in this Ordinance, a Variance is authorized only for height, area, size of Structure, size of Yards, and open spaces, as provided in Section 310.42 of this Ordinance.

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 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 and the side Property Line of the Lot and extending from the front Property Line to the rear Property Line.

Zoning Administrator: The person appointed by the Town Council and charged with interpretation, administration and enforcement of this Ordinance. In the absence of the Zoning Administrator, and if no other person has been designated by the Town Council to perform such duties, then the Town Administrator shall perform such duties.

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 V.

# ARTICLE III – ADMINISTRATIVE

## PROVISIONS

300 **Administration of this Ordinance.** 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. 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 Administrator who shall be responsible for the day to day administration of this Ordinance.

301 **Certificate of Zoning Compliance Required.** No Building or other Structure shall be constructed, erected, moved, enlarged, or structurally altered, nor shall any land be cleared, graded, filled or excavated, nor shall any new Parking Spaces or parking lots be installed or constructed, 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 Administrator. No Certificate 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 Special Use Permit is required, the Zoning 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.

301.1 **APPLICATIONS FOR ZONING COMPLIANCE CERTIFICATE.** All applications for zoning compliance certificates shall be accompanied by a plan drawn to scale (the “Development Plan”) 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 utilities, rights-of-way, culverts and drainage ways;
- 6) the parcel identification number consistent with Buncombe County tax records;
- 7) evidence that ad valorem 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 or other evidence of title.

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.

301.2 **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 be set forth in the Town of Montreat Fee Schedule.

301.3 **CERTIFICATE OF ZONING COMPLIANCE LIMITED TO TWELVE MONTHS PLUS ONE EXTENSION.** If within twelve (12) 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.

301.4 **PRIOR APPROVAL REQUIRED FOR PLAN CHANGES.** After a Certificate of Zoning Compliance has been issued, no deviations from the terms of the application or the Certificate of Zoning Compliance shall be made until the applicant has submitted a new application consistent with Section 301.1 to the Town Zoning Administrator describing the development including all proposed changes. No construction shall take place that is inconsistent with the approved Development Plan until amended plans are fully approved by the Zoning Administrator.

301.5 **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.

## 302 **Building and Occupancy Permits Required.**

302.1 **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 Board of Commissioners, shall be paid to the Town.

- 302.2 **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.
- 302.3 **CERTIFICATE OF OCCUPANCY REQUIRED.** No new Building or part thereof shall be occupied, and no addition to 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 N.C.G.S. Chapter 160D, 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, the Building Inspector finds that the Building in all respects conforms to the provisions of N.C.G.S. Chapter 160D, the regulatory codes, and the Zoning Ordinance for the occupancy intended.
- 302.4 **CERTIFICATE OF COMPLIANCE.** At the conclusion of all work done under a Building Permit, the Building Inspector shall make a final inspection and if the Building Inspector finds that the completed work complies with the North Carolina Building Code, applicable local laws and with the terms of the Building Permit, the Building Inspector shall issue Certificate of Compliance. No new Building or part thereof may be occupied, 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 Building Inspector has issued a Certificate of Compliance. A temporary Certificate of Compliance may be issued permitting occupancy for a stated period of time of either the entire building or property or of specified portions of the Building that the Building Inspector finds may safely be occupied prior to final completion of the entire Building. Violations of this Section shall constitute a Class 1 misdemeanor.
- 303 **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 (See Section

305), may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation.

304 **Certain Appeals**

304.1 **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 Administrator shall be recorded in writing and may be appealed to the Board of Adjustment pursuant to the procedure found in Section 310.41 of this Ordinance.

304.2 **APPEALS FROM THE BUILDING INSPECTOR.** Appeals from the Building Inspector decisions are made to the Commission of Insurance under N.C.G.S. 160D-1127.

305 **Notice of Violation and Citation Procedures.**

305.1 **NOTICE REQUIRED BEFORE PENALTY.** No penalty shall be assessed unless and until the holder of the Certificate of Zoning Compliance involved in the violation, as well as the owner of the affected property, have been notified of the violation in accordance with this section.

305.2 **NOTICE OF VIOLATION.** Whenever the Zoning Administrator determines that work or activity violates a Certificate of Zoning Compliance, or any plan, order, condition, permit or other developmental approval issued in accordance with N.C.G.S. Chapter 160D, Article 4 (a “Developmental Approval”), or any other provision of this Ordinance, the Zoning Administrator shall issue a Notice of Violation. The Zoning Administrator shall deliver such Notice of Violation to the holder of the Developmental Approval and to the property owner by personal delivery, electronic delivery or first-class mail. In addition, the Zoning Administrator may deliver the Notice of Violation to the occupant of the property or the person undertaking the work or activity, and the Zoning Administrator may post the Notice of Violation on the property. The Zoning Administrator shall certify to the Town that the Notice of Violation was provided in accordance with this Section and this certificate shall be deemed conclusive in the absence of fraud. Any person who has standing under N.C.G.S. § 160D-1402(c) may appeal the Notice of Violation in accordance with Section 310.41. The Zoning Administrator may include the following in the Notice of Violation:

- (1) that the land, Building, Sign, Structure, or Use is in violation of this Ordinance;
- (2) the nature of the violation, and citation of the Section of this Ordinance violated;
- (3) the measures necessary to remedy the violation; and,
- (4) a notification of owner and occupant’s right to appeal.

305.3 **APPEAL.** Any person or entity who receives a Notice of Violation may appeal in writing the decision of the Zoning Administrator in accordance with the provisions of Section 310.41 of this Ordinance. In the absence of an appeal, the remedies and penalties sought by the Zoning Administrator in the Notice of Violation shall be final.

305.4 **ORDER OF CORRECTIVE ACTION.** If, following a hearing held pursuant to an appeal as prescribed above, the Board of Adjustment shall affirm the violation stated in the Notice of Violation, either in whole or in part., then it shall make an order in writing affirming the violation and ordering the compliance with the measures necessary to remedy the violation (“Order of Corrective Action”).

305.5 **FAILURE TO COMPLY WITH AN ORDER.** If the party or parties to whom the Notice of Violation is addressed shall fail to comply with: (a) Such Notice of Violation from which no appeal has been taken, or (b) An Order of Corrective Action following an appeal, then such party or parties shall be subject to such remedies and penalties as may be provided by Section 307 and North Carolina law. If such party or parties fail to comply with the remedies and penalties prescribed, then enforcement shall be sought through a court of competent jurisdiction.

306 **Responsibility for Violations.** Any person who constructs, erects, installs, expands, alters, repairs or maintains any Building or Structure in violation of this Ordinance; any person who clears or grades property in violation of this Ordinance; any person who uses any Building or Structure in violation of this Ordinance; or any person who owns the property where a person constructs, erects, installs, expands, alters, repairs or maintains a Building or Structure, or clears or grades property in violation of this Ordinance; (all such persons being individually a “Responsible Party” and collectively, “Responsible Parties”) shall be subject to civil and criminal penalties in accordance with Section 307 of this Ordinance as provided by N.C.G.S. § 160A-175 or other applicable law, and in addition thereto such violation may be enjoined and restrained as provided in N.C.G.S. § 160D-404.

307 **Enforcement Procedures.** Once a violation of this Ordinance has been determined, then the following procedures may be used to address such violation and to enforce the provisions of this Ordinance.

307.1 **REVOCATION OF DEVELOPMENTAL APPROVALS** – In accordance with N.C.G.S. §160D-403(f), the Zoning Administrator may revoke a Certificate of Zoning Compliance or other Developmental Approval for any material departure from the approved application or Development Plan; for refusal by the Responsible Party to comply with this Ordinance; or for false statements or misrepresentations made in obtaining the Developmental

Approval. The Zoning Administrator shall notify the holder of the Developmental Approval in writing stating the reason for the revocation. The revocation may be appealed to the Zoning Board of Adjustment pursuant to N.G.C.S. §160D-405.

307.2 **STOP WORK ORDERS** – Whenever any work or activity subject to regulation pursuant to this Ordinance and Chapter 160D is undertaken in material violation of this Ordinance, the Zoning Administrator may order the specific work or activity that is in violation or presents a hazard to be immediately stopped pursuant to N.C.G.S. § 160D-404(b). The Order shall be in writing, directed to the person doing the work or activity to be stopped, and state the reasons for the Order and the conditions under which the work or activity may be resumed. The Zoning Administrator shall deliver a copy of the Order to the holder of the Developmental Approval and the owner of the property by personal delivery, electronic delivery or first-class mail. The Zoning Administrator shall certify to the Town that the Order was provided in accordance with this Section and this certificate shall be deemed conclusive in the absence of fraud. Any person who has standing under N.C.G.S. § 160D-1402(c) may appeal the Notice of Violation in accordance with Section 310.41.

307.3 **LEGAL ACTION** – If a civil penalty is not paid or violations cured or corrected within the time specified in the citation, the Board of Commissioners may institute a civil action in the nature of a debt in the General Court of Justice. If a violation that constitutes a criminal penalty is not cured or corrected within the time specified in the citation, the Board of Commissioners may refer the matter for institution of a criminal action.

307.4 **NORTH CAROLINA BUILDING CODE**. Enforcement of the North Carolina Building Code shall be in accordance with N.C.G.S. §§160D-1110 through 160D-1127.

307.5 **STATE AND COMMON LAW REMEDIES** - In addition to other enforcement provisions contained in this Article, the Town Board of Commissioners may exercise any and all enforcement powers granted to it by state law or common law.

307.6 **PENALTIES**

307.61 **CRIMINAL PENALTIES** – A violation of this Ordinance shall be a misdemeanor and the offender shall be subject to a fine not to exceed five hundred dollars (\$500.00) as provided by N.C.G.S. Section 14-4.

307.62 **CIVIL PENALTIES** – Any person who violates any provision of this Ordinance shall be subject to assessment of the maximum civil penalty



in the amounts provided in Section 3, Chapter L, of the General Ordinance of the Town of Montreat for violations of the General Ordinance. For each day that the violation is not corrected the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

307.63 **PENALTY CITATION** – If the Responsible Party does not comply with this Ordinance after having been given a Notice of Violation, then the Zoning Administrator shall send a written penalty citation to the Responsible Party by personal delivery or by first-class mail with delivery confirmation. The citation shall state the amount of the civil penalty or the applicable type of criminal penalty. A citation for civil penalty shall direct the Responsible Party to pay the civil penalty within fifteen (15) days of the date of the citation.

307.7 **REMEDIES** 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 civil penalties provided in Section 307.62. 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.
- (B) **WITHHOLDING OF CERTIFICATE OF OCCUPANCY.** The Zoning Administrator or the Building Inspector 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 Building Inspector 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 by this Ordinance for the property on which the violation occurs.
- (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 an injunction and order of abatement to correct a violation of this Ordinance in accordance with N.C.G.S. § 160A-175. 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) **CIVIL ACTION.** In accordance with N.C.G.S. §160d-404(c)(1), if a Building or Structure is constructed, erected, altered, reconstructed, converted, repaired or maintained, or any Building, Structure or land is used or developed in violation of this Ordinance, the Board of Commissioners, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful construction, erection, alteration, reconstruction, conversion, repair, maintenance, use or development; to restrain, correct or abate the violation; to prevent occupancy of the Building, Structure or land; or to prevent any illegal act, conduct, business or use in the Building or Structure or on the land.
  
- (F) **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 N.C.G.S. § 160A-193, the Zoning Administrator, with 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 as provided in N.C.G.S. §160A-193.

### 308 **Planning and Zoning Commission.**

308.1 **COMPOSITION.** The Planning and Zoning Commission (also referred to as the Planning Commission) shall be composed of seven members selected by the Board of Commissioners for matters within the Town of Montreat and for extra-territorial jurisdiction (ETJ) matters. The seven-member Planning Commission shall be composed of six members residing in the Town of Montreat, and one member residing in the ETJ of the Town of Montreat. Two alternate members who reside in the Town of Montreat shall also be selected by the Town Board of Commissioners. 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 the ETJ, the Town shall notify the applicable Board of County Commissioners and request a nomination within ninety (90) days. The Town Board of Commissioners shall appoint the person who is so nominated; or if no nomination is made during that period, the Town Board of Commissioners shall fill the vacancy.

308.2 **PROCEEDINGS.** 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. All members of the Planning Commission shall comply with NCGS 160D-109, and other applicable conflict of interest laws and requirements of the State of North Carolina.

308.3 **POWERS AND DUTIES.** In addition to its powers and duties under the Subdivision Ordinance, it shall be the duty of the Planning Commission:

- (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, review, maintain, monitor and periodically update and recommend to the Board of Commissioners a comprehensive plan for the physical development of the Town;
- (C) To prepare and recommend to the Board of Commissioners principles and policies for guiding action in the development of the Town;
- (D) To prepare and recommend to the Town Board of Commissioners Ordinances promoting orderly development in accordance with the comprehensive plan;
- (E) To receive and review all applications for amendment to this Zoning Ordinance and to make recommendations thereon to the Town Board of Commissioners;
- (F) To keep the Town Board of Commissioners and the general public informed and advised as to these matters;
- (G) 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
- (H) To perform any other duties to which it may be lawfully assigned.

309 **Amendments to Zoning Ordinance and Official Zoning Map.** This ordinance and 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 Section. 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, the Board of Commissioners may undertake the necessary steps to amend the Zoning Ordinance or the Official Zoning Map.

309.1 **REQUESTS FOR AMENDMENT.**

309.11 **WHO MAY FILE A REQUEST.** A proposed change or amendment to the Zoning Ordinance or the Official Zoning Map may be requested 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.

309.12 **WRITTEN APPLICATION.** All applications for zoning amendments must be in writing. Application forms for amendment requests may be obtained from the Town Office. Completed application forms, plus any additional information that the Zoning Administrator or applicant feels to be pertinent, shall be filed with the Zoning Administrator at least thirty (30) days prior to the Planning and Zoning Commission’s scheduled 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.

309.13 **APPLICATION FEE.** 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.

309.14 **COMMISSION MEETING SCHEDULED.** 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.

309.2 **MEETING AND ACTION BY THE PLANNING AND ZONING COMMISSION.**

309.21 The Zoning Administrator shall transmit copies of the application and all documents and other data submitted by the applicant with respect to the

amendment request to the members of the Planning and Zoning Commission prior to its meeting.

309.22 Following its meeting at which it considers the requested amendment, the Planning and Zoning Commission shall prepare a report, including its official recommendation to accept or reject the proposed amendment. The Planning and Zoning Commission shall deliver its written report, which shall address consistency with the Comprehensive Plan and other matters as deemed appropriate, with its official recommendation to the Board of Commissioners within ninety (90) days of the date of the meeting at which it considered the application. Failure of the Planning and Zoning Commission to submit its report and recommendations within the ninety (90) day period shall be deemed a favorable recommendation.

309.23 The Planning and Zoning Commission shall provide a written recommendation to the Board of Commissioners that addresses consistency with the Comprehensive Plan and other matters as deemed appropriate.

309.24 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.

309.25 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 involving a member's own financial interest or official conduct.

309.3 **PUBLIC HEARING BY THE BOARD OF COMMISSIONERS.** Before adopting 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. Notice of the hearing shall be published in a newspaper of general circulation in Montreat once a week for two (2) consecutive weeks and the first publication date shall be not less than ten (10) days nor more than twenty-five (25) days before the date scheduled for the hearing. Citizen comments may be submitted in accordance with N.C.G.S. §160D-603. At the public hearing, the Board of Commissioners may adopt the proposed amendment, reject the proposed amendment, or refer the proposed amendment back to the Planning and Zoning Commission for further consideration.

309.4 **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.

309.41 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 within two hundred fifty feet (250') of the affected 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.

309.42 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. §160D-601. 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. Citizen comments may be submitted in accordance with N.C.G.S. §160D-603.

309.43 At the public hearing, the Board of Commissioners may adopt the proposed change, reject the proposed change, or refer the proposed change back to the Planning and Zoning Commission for further consideration.

309.44 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 approved by the Board of Commissioners, even if the Zoning Administrator has failed to make the appropriate changes.

309.45 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.

## 310 **Zoning Board of Adjustment**

310.1 **AUTHORITY.** The Zoning Board of Adjustment (sometimes referred to as the Board of Adjustment) shall have the authority to rule on matters of interpretation of this Ordinance, consider appeals from decisions of the Zoning Administrator, issue Special Use Permits, grant Variances and perform other duties as defined in this Ordinance. Any appeal from a decision of the Board of Adjustment shall be made in accordance with N.C.G.S. Section 160D-1402.

310.2 **COMPOSITION.** The Zoning Board of Adjustment shall be composed of seven members selected by the Board of Commissioners for matters within the Town of Montreat and for extra-territorial jurisdiction (ETJ) matters. The seven-member Board of Adjustment shall be composed of six members residing in the Town of Montreat, and one member residing in the ETJ of the Town of Montreat. Two alternate members who reside in the Town of Montreat shall also be selected by the Town Board of Commissioners. Members shall serve a term of three years. No member shall serve more than two consecutive terms. When a vacancy occurs on the Board of Adjustment for the member representing the ETJ, the Town shall notify the applicable Board of County Commissioners and request a nomination

within 90 days. The Town Board of Commissioners shall appoint the person who is so nominated; or if no nomination is made during that period, the Town Board of Commissioners shall fill the vacancy.

310.3 **PROCEEDINGS.** 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 rules of procedure in accordance with the provisions of this Ordinance and N.C.G.S §160D-406. 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 of Adjustment may administer oaths according to the procedures adopted in the rules of procedure of the Board of Adjustment. All meetings of the Board of Adjustment shall be open to the public. All members of the Zoning Board of Adjustment shall comply with NCGS 160D-109, and other applicable conflict of interest laws and requirements of the State of North Carolina.

310.4 **POWERS AND DUTIES.** The Zoning Board of Adjustment shall have the following powers and duties:

310.41 **APPEALS.** 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. 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. The appeal shall proceed in accordance with N.C.G.S. §160D-405, Section 310.5 and the following procedures:

- (A) Written notice of a determination by the Zoning Administrator shall be given to the owner of the property that is subject to the determination and to the party who sought the determination (if different from the owner). The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. Constructive notice to all persons with standing to appeal the determination may be provided by posting a sign on the affected property for at least ten (10) days in accordance with the procedures established in N.C.G.S. 160D-403.
- (B) Any person who has standing under N.C.G.S. 160D-1402(c) or the Town may appeal a determination by the Zoning Administrator to the Board of Adjustment by filing a notice of appeal with the Town Clerk



in accordance with Section 310.51 and Section 310.52. The notice of appeal shall state the grounds for the appeal.

- (C) The owner or other party shall have thirty (30) days from receipt of the written notice of determination within which to file an appeal. Any other person with standing to appeal shall have thirty (30) days from receipt of actual or constructive notice of the decision within which to file an appeal.
  
- (D) 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 of Adjustment, after notice of appeal has 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 fifteen (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 Development Approval to use such property; in these situations the appellant may request and the Board of Adjustment may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.
  
- (E) 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.
  
- (F) When hearing an appeal pursuant to N.C.G.S. Section 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record and the scope of review shall be as provided in N.C.G.S. Section 160D-1402(j).
  
- (G) 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. 160D-406, 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.

310.42 **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:

- (A) 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.
- (B) 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.
- (C) 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.
- (D) The Variance is consistent with the spirit, purpose and intent of the Ordinance such that public safety is secured and substantial justice is achieved.
- (E) The Variance requested is the minimum Variance that will make possible the requested Use of the land, Building or Structure.
- (F) The Variance is not a request to permit a Use of land, Building or Structure which is not permitted in the applicable Zoning District.

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 have been met. If a Variance is granted it shall be the least possible deviation from the requirements of this Ordinance. In granting any Variance, the Board of Adjustment may prescribe appropriate conditions and safeguards in conformity with this Ordinance. 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.

310.43 **SPECIAL USE PERMITS.** It shall be the duty of the Board of Adjustment to hear requests for Special Use Permits and grant said permits in accordance with the guidelines set forth by this Ordinance (see Section 310.6).

310.5 **APPEALS AND VARIANCE PROCEDURES.** The Board of Adjustment shall hear and decide appeals from any decision or determination made by the Zoning Administrator and all requests for Variances.

310.51 **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.

310.52 **REQUIRED MATERIALS.** All appeals or applications for a Variance shall be filed together with the following materials:

- (A) A neatly drawn map of the property which is the subject of the appeal or variance, drawn to scale and showing the location of any Building and other improvement located on the property and showing any adjoining road:
- (B) 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 or application for a Variance;
- (C) 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

- (D) 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.

310.53 **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 a reasonable time.

310.54 **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 within 250' of the 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.

310.55 **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, the applicant, Town and persons with standing (N.C.G.S. 160D-1402(c)) 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 subpoenas 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.

310.56 **VARIANCE LIMITED TO TWELVE MONTHS.** Any Variance granted by the Board of Adjustment must be acted upon within 12 (twelve) 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.

310.57 **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.

310.6 **REGULATIONS FOR SPECIAL USE PERMITS.** The issuance of Special Use Permits is subject to the requirements of this Section 310.6. Special Uses are subject to the standards or conditions designated with a "S" in the Table of Permitted Uses, Section 512. The development standards listed herein are additional to other requirements in this Ordinance. These development standards are Use specific and apply to those Uses requiring approval of a Special Use (designated with a 'S' in the Table of Permitted Uses, Section 500). Such Uses shall be subject to these standards as well as any additional standards or conditions required by the Special Use Permit.

310.61 **OBJECTIVES AND PURPOSE.** The purpose of this section 310.6 is to ensure there is adequate review and control of the issuance of Special Use Permits, which may have a direct influence or impact upon neighboring or contiguous land uses. This review is intended to aid in protecting the private and public values and interests in such land uses whether residential, institutional, or commercial in nature. The Uses for which Special Use Permits are required are listed in the Table of Permitted Uses.

310.62 **PROCEDURES FOR SPECIAL USE PERMITS APPROVED BY THE BOARD OF ADJUSTMENT.** A Special Use Permit may be issued by the Zoning Administrator after approval by the Board of Adjustment for the Uses as designated in the Table of Permitted Uses, Section 500. All applications for Special Use Permits shall be submitted in accordance with application requirements. Once the application has been determined complete, the Zoning Administrator shall forward the application to the Chair of the Board of Adjustment.

The Board of Adjustment shall hold a public hearing prior to rendering a decision on the Special Use Permit, and if approved, shall include approval of such plans as may be required. In approving the permit, the Board of Adjustment shall find:

- 310.621 That the Use will not be detrimental to or endanger the public health, safety or general welfare if located where proposed and developed according to the plan as submitted and approved;
- 310.622 That the Use meets or will meet all the required and applicable development standards and conditions of the Town of Montreat (including without limitation all development standards, conditions, and requirements related to utilities, parking, access, and stormwater drainage and the applicable regulations of the Zoning District in which it is located, except as such regulations may, for each case, be modified by the Board of Adjustment);
- 310.623 That the Use will not substantially diminish and impair the value of any property any portion of which is located within two hundred fifty feet (250') of the boundary of the parcel on which the Use will be located.
- 310.624 That the location and character of the Use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will not be injurious to the use and enjoyment of other property, for the purposes already permitted, within the area in which it is located;
- 310.625 That the location and character of the Use, if developed according to the plan as submitted and approved, will be in general conformity with the adopted policies and plans, including the Comprehensive Plan of the Town of Montreat; and
- 310.626 That adequate measures have been taken or will be taken to provide ingress and egress so designed as to minimize congestion in the public streets.
- 310.63 **PUBLIC HEARING.** Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that

is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land within two hundred fifty feet (250') of the parcel of land that is the subject of the hearing; and to other persons as may be required or necessary. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent Street or highway Right-of-Way.

310.631 The Zoning Administrator shall make every reasonable effort to comply with the notice provisions set forth in this Section.

310.632 At the conclusion of the public hearing, the Board of Adjustment may proceed to vote on the permit request, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

310.633 The Board of Adjustment is not required to take final action on a Permit request within any specific period of time, but it should proceed as expeditiously as practicable on permit requests since inordinate delays can result in the applicant incurring unnecessary costs.

310.634 The Board of Adjustment shall only approve the requested application if it concludes, based upon the information submitted at the hearing, that:

- (1) The requested permit is within its jurisdiction to grant according to the Table of Permitted Uses;
- (2) The application for the permit is complete; and
- (3) If completed as proposed in the application, the development will comply with all the requirements of this Ordinance.

310.635 Even if the Board of Adjustment finds that the application complies with all other provisions of this Ordinance, it shall deny the permit if it is unable to make all the findings required in section 310.62, based upon a preponderance of the evidence submitted at the hearing.

310.636 The burden of presenting a complete application to the Board of Adjustment shall be upon the applicant. However, unless the Board informs the applicant at the hearing in what way the application is incomplete and offers the applicant an opportunity to complete the application (either at that meeting or at a continuation hearing), the application shall be presumed to be complete. Once a completed application has been submitted, the applicant shall have the burden to present competent, substantial and material evidence that would support findings by the Board of Adjustment in accordance with the requirements of section 310.62 (that is, the applicant has the burden to make a prima facie case sufficient to support the required findings), and that demonstrates the applicant has otherwise complied with all the requirements of this Ordinance applicable to the requested Special Use Permit. Upon such a showing by the applicant, those parties opposed to granting the Special Use Permit shall have the burden of presenting competent, substantial and material evidence that disproves or rebuts the evidence and information presented by the applicant.

310.637 The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this Ordinance remains at all times on the applicant. The burden of persuasion on the issue of whether the application should be turned down for any of the reasons set forth in Subsection 310.62 *et seq* rests on the party or parties urging that the requested permit should be denied.

310.64 **DECISION OF THE ZONING BOARD OF ADJUSTMENT.** The concurring vote of a majority of the members of the Board of Adjustment shall be necessary to grant a Special Use Permit. 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.

310.641 If it approves the Special Use Permit, the Board of Adjustment may impose such conditions as will assure that the Use in its proposed location will be harmonious and with



the spirit and intent of this Ordinance. All such additional conditions shall be entered in the minutes of the meeting at which the Special Use Permit is granted and also onto the Special Use Permit and on the plans submitted therewith. All conditions shall run with the land and shall be binding on the original applicant for the Special Use Permit, its heirs, successors and assigns. In order to ensure that such conditions and requirements of each Special Use Permit will be fulfilled, the applicant for the Special Use Permit may be required to provide physical improvements required as a basis for the issuance of the Special Use Permit.

310.642 In addition to the specific conditions required and whatever additional conditions the Board of Adjustment deems to be reasonable and appropriate, Special Uses shall comply with the height, Yard, area and parking regulations of the Zoning District in which the property is located.

310.643 If the holder of the Special Use Permit fails to comply with the plans submitted with the application for the Special Use Permit or fails to comply with any conditions of the Special Use Permit, the Board of Adjustment may revoke the Special Use Permit by following the same process as required for approval of the Special Use Permit. See N.C.G.S. Section 160D-403(f). During the pendency of any such revocation proceedings, the Town and any person(s) operating under a Building Permit(s) shall be subject to the proceedings described in N.C.G.S. 160D-405.

310.644 Minor Modifications.

a) The Town of Montreat Zoning Administrator is authorized to review and approve administratively minor modifications to an approved Special Use Permit if the minor modification proposes to:

1. Change the location of any building or structure by ten feet or less in any direction.
2. Change the height of any building or structure by ten percent or less.

3. Change the square footage of any building or structure by ten percent or less.
4. Modify the number, location, and/or size of entrances to any building or structure.
5. Add, delete, or relocate architectural elements such as attached steps, roof, gutters, chimneys, dormers and similar fixtures.

b) These modifications are subject to the following limitations:

1. The modification does not involve a change in uses permitted or the density of overall development permitted.
2. The modification does not increase the impacts generated by the development on traffic, stormwater runoff, or similar impacts beyond what was projected for the original development approval.
3. The modification complies with all development ordinance requirements of the Town of Montreat and other applicable conditions of approval.

310.7 **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 N.C.G.S. 160D-1402. Any party with standing under N.C.G.S. 160D-1402 may appeal by filing a petition for review with the Buncombe County Clerk of Superior Court. Appeals shall be filed within the times specified in N.C.G.S. §160D-1405(d).

# ARTICLE IV – ESTABLISHMENT OF ZONING DISTRICTS

400 **Establishment of Districts.** For the purposes of this Ordinance, the Town of Montreat is divided into Zoning Districts as follows:

- R-1: Low Density Residential District
- R-2: Medium Density Residential District
- R-3: Low Density Residential District
- I/R: Institutional/Residential District
- I: Institutional District
- WL: Woodlands District
- TCO: Town Center Overlay District
- RPO: Ridge Protection Overlay District
- CD: Conservation District
- PUD: Planned Unit Development District

In addition to the general zoning Districts delineated above, a Conditional Zoning District (bearing the designation CZ) corresponding to the zoning Districts may be established as authorized in this ordinance. Accordingly, the following Conditional Zoning Districts may be designated upon approval by the 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

401 **District boundaries.** The boundaries of the above Zoning Districts are hereby established as shown on the Official Zoning Map of the Town of Montreat, North Carolina, which, together with all explanatory matters thereon, is hereby adopted by reference and declared to be a part of this Ordinance.

401.1 The Official Zoning Map shall be identified by the signature of the Mayor attested by the Town Clerk, and bearing the Seal of the Town under the words: "Official

Zoning Map, Town of Montreat, North Carolina," together with the date of the adoption of the Official Zoning Map.

- 401.2 If, in accordance with the provisions of this Ordinance and North Carolina General Statutes Chapter 160D, changes are made in District boundaries or other matters portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map by the Zoning Administrator promptly after the amendment has been approved by the Board of Town Commissioners.
- 401.3 No changes of any nature shall be made on the Official Zoning Map or any matter shown thereon except in conformity with the procedures set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be void and a violation of this Ordinance.
- 401.4 The Official Zoning Map shall be located in the office of the Town of Montreat. It shall be the final authority as to the current zoning status of land, Buildings, and other Structures in the Town.

402 **Rules for interpretation of Zoning District Boundaries.** When uncertainty exists as to the boundaries of Districts as shown on the Official Zoning Map, the following rules shall apply:

- 402.1 Boundaries indicated as approximately following the center lines of streets, highways, alleys, or public utility easements shall be construed as following such center lines;
- 402.2 Boundaries indicated as approximately following platted Lot or tract lines shall be construed as following such lines, whether public or private;
- 402.3 Boundaries indicated as approximately following the Town Limits shall be construed as following such Town Limits;
- 402.4 Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks;
- 402.5 Boundaries indicated as approximately following the center lines of streams, rivers, channels, lakes, or other lines shall be construed as following the center line;
- 402.6 Boundaries indicated as approximately following topographic elevations shall be construed as following such elevations;
- 402.7 Boundaries indicated as parallel to or extensions of features indicated above shall be so construed.
- 402.8 If the boundary location cannot be resolved according to any of the above criteria, the Board of Adjustment shall interpret the intent of the map as to the location of District boundaries.

# ARTICLE V – ZONING DISTRICT REGULATIONS

500 **Permitted Uses Table** - The following table establishes what principal Uses will be allowed in a particular Zoning District within the Town of Montreat. The Uses in this table indicated by the letter “P” will be permitted by right but must conform to all regulations of the applicable Zoning District. The uses indicated by the letter “S” will be permitted but only as a “Special Use Permit” and must first be approved in accordance with the provisions of Section 310.6 of this Ordinance. Uses which are not listed in the Table are not permitted by the Town of Montreat.

**Table 1: Permitted Uses Table**

USE CATEGORY	PERMITTED USES								
	R-1	R-2	R-3	IR	I	WL	RPO	CD	TCO
<b>RESIDENTIAL</b>									
Single Family Dwelling	P	P	P	P					P
Two Family Dwelling (Duplex)	P	P	P	P					S
Multi-Unit Dwelling				P					S
Dormitory					P				P
Family Care Homes	P	P	P	P					P
Group Care Facility (Nursing Homes, Rest Homes, Congregate Care, and Similar Facilities.)				S	P				
Manufactured Home, Class A	S								
Manufactured Home, Class B	S								
<b>ACCESSORY USES AND STRUCTURES</b>									
Accessory Buildings or Uses	P	P	P	P	P				P
Accessory Dwelling Unit	S	S	S	S					S

USE CATEGORY	PERMITTED USES								
	R-1	R-2	R-3	IR	I	WL	RPO	CD	TCO
(PRIVATE) USE CATEGORY	PERMITTED USES								
	R-1	R-2	R-3	IR	I	WL	RPO	CD	TCO
<b>ACCESSORY USES AND STRUCTURES cont.</b>									
Garage in Front Yard (See Section 606.2)	S	S	S	S					
Home Occupation	P	P	P	P					P
Studios	S	S	S	P					
Swimming Pools, Private	P	P	P	P	P				P
<b>PUBLIC &amp; INSTITUTIONAL</b>									
Auditorium				P	P				P
College				P	P				P
Conference Center				S	P				P
Churches				S	P				P
Columbarium				S	S				S
Community Facility		S		S	P				P
Educational Facility				P	P				P
Libraries, Public				P	P				P
Municipal Government Facilities				P	P				P
Museums, Public				P	P				P
Parks or other Public Recreational Facilities	S	S	S	S	S	S		S	S
Public Works Maintenance Facility				S	P				P
<b>COMMERCIAL</b>									
Bed and Breakfast		S		S					

USE CATEGORY	PERMITTED USES								
	R-1	R-2	R-3	IR	I	WL	RPO	CD	TCO
Boarding Houses		S		S	P				P
Bookstore				S	P				
(PRIVATE) USE CATEGORY	PERMITTED USES								
	R-1	R-2	R-3	IR	I	WL	RPO	CD	TCO
<b>COMMERCIAL cont.</b>									
Camps, Summer						S			P
Campgrounds						S			
Convenience Store				S	S				
Day Care Center				S	P				
Drug Stores and Pharmacies				S	P				P
Eating Establishments (Excluding Drive-ins)				S	P				P
General Merchandise and Sales Retail				S	P				P
Hospitals				S	S				S
Hotels				S	P				P
Professional Offices, including but not limited to medical, dental, law, or real estate				S	P				P
Riding Stables						S			
Swimming Pools, Public				S	S				S
Theaters, Privately Operated					S				S
Theaters, Public Outdoor					S				S
<b>OTHER</b>									
Agriculture excluding logging and timber						P	P	S	

USE CATEGORY	PERMITTED USES								
	R-1	R-2	R-3	IR	I	WL	RPO	CD	TCO
harvest									
Telecommunication Tower					S				S



501 **R-1 Residential District.**

501.1 Purpose. This Zoning District is established to protect areas in which the principal Use of the land is for low Density, Single- and Two-Family Dwellings and related Accessory Buildings or Uses. Any Use, which, because of its characteristics, would interfere with the development of or be detrimental to the residential nature of the area is prohibited.

501.2 Permitted Uses. See Section 500.

501.3 Special Uses. See Section 310.6.

501.4 Minimum Lot Area.

501.41 Ten thousand (10,000) square feet for all Single-Family Dwellings.

501.42 Fifteen thousand (15,000) square feet for Two-Family Dwellings.

501.43 Fifteen thousand (15,000) square feet for other Uses.

501.5 Minimum Lot Width. Seventy-five feet (75').

501.6 Minimum Lot Depth. One hundred feet (100').

501.5 Minimum Front Yard. Thirty feet (30').

501.8 Minimum Side Yard.

501.81 Single-Family and Two-Family Dwelling Units: Fifteen feet (15')

501.82 All Other Uses: Twenty-five feet (25').

501.83 Lots with side Yard abutting Woodland District (as to the side Yard abutting the Woodland District): Ten feet (10')

501.9 Minimum Rear Yard. Twenty percent (20%) of the mean Lot Depth provided that rear Yards on Lots used for Dwelling purposes need not exceed thirty-five feet (35').

501.91 Lots with rear Yard abutting Woodland District: Ten feet (10')

501.10 Maximum Building Height. Thirty-five feet (35').

501.11 Off-Street Parking and Loading Regulations. See Article VII.

501.12 Accessory Buildings. See Section 606.

501.13 Signs. See Article VIII.

502 **R-2 Residential District.**

502.1 Purpose. This Zoning District is established to protect areas in which the principal Use of the land is for medium Density, Single- and Two-Family Dwellings and related Accessory Buildings or Uses. Any Use which, because of its characteristics, would interfere with the development of, or be detrimental to the residential nature of the area is prohibited.

502.2 Permitted Uses. See Section 500.

502.3 Special Uses. See Section 310.6.

502.4 Minimum Lot Area.

502.41 Eight thousand (8,000) square feet for all Single-Family Dwellings.

502.42 Twelve thousand (12,000) square feet for all Two-Family Dwellings.

502.43 Twelve thousand (12,000) square feet for all other Uses.

502.5 Minimum Lot Width. Sixty feet (60').

502.6 Minimum Lot Depth: One hundred feet (100').

502.5 Minimum Front Yard. Thirty feet (30').

502.8 Minimum Side Yard.

502.81 Single- and Two-Family Dwellings: Ten feet (10').

502.82 All Other Uses: Twenty feet (20').

502.83 Lots with side Yard abutting Woodland District (as to the side Yard abutting the Woodland District): Ten feet (10').

502.9 Minimum Rear Yard. Twenty percent (20%) of the mean Lot Depth, provided that such rear Yards used for Dwellings need not exceed thirty feet (30').

502.91 Lots with rear yard abutting Woodland District: Ten feet (10')

502.10 Maximum Building Height. Thirty-five feet (35').

502.11 Off-Street Parking and Loading Regulations. See Article VII.

502.12 Accessory Buildings. See Section 606.

502.13 Signs. See Article VIII.

503 **R-3 Residential District.**

503.1 Purpose. This Zoning District is established to protect areas in which the principal Use of the land is for low Density, Single- and Two-Family Dwellings and related Accessory Buildings and Uses. Any Use, which, because of its characteristics would interfere with the development of or be detrimental to the residential nature of the area is prohibited. The R-3 Residential District is similar to the R-1 District except that minimum Lot sizes are increased due to the limited availability of Town services and the environmentally sensitive nature of the land within these outlying regions.

503.2 Permitted Uses. See Section 500.

503.3 Special Uses. See Section 310.6.

503.4 Minimum Lot Area.

503.41 Twenty thousand (20,000) square feet for all Single-Family Dwellings.

503.42 Thirty thousand (30,000) square feet for Two-Family Dwellings.

503.43 Thirty thousand (30,000) square feet for all other Uses.

503.5 Minimum Lot Width. Seventy-five feet (75').

503.6 Minimum Lot Depth. One hundred feet (100').

503.5 Minimum Front Yard. Thirty feet (30').

503.8 Minimum Side Yard.

503.81 Single-Family and Two-Family Dwelling Units: Fifteen feet (15').

503.82 All Other Uses: Twenty-five feet (25').

503.83 Lots with side Yard abutting Woodland District (as to the side Yards abutting the Woodland District): Ten feet (10').

503.9 Minimum Rear Yard. Twenty percent of the mean Lot Depth provided that rear Yards on Lots used for Dwelling purposes need not exceed thirty-five feet (35').

503.91 Lots with rear Yard abutting Woodland District: Ten feet (10').

503.10 Maximum Building Height. Thirty-five feet (35').

503.11 Off-Street Parking and Loading Regulations. See Article VII.

503.12 Accessory Buildings. See Section 606.

503.13 Signs. See Article VIII.

504 **I/R Institutional/Residential District.**

504.1 Purpose. The purposes of the Institutional/Residential Zoning District are (i) to provide for a zone of transition between purely residential and purely institutional Districts; (ii) to serve as a residential District to accommodate a mixture of residential, office, and institutional Uses in conditions of good health and safety; and (iii) to provide for protected property values in areas which are predominately residential in character.

504.2 Permitted Uses. See Section 500.

504.3 Special Uses. See Section 310.6.

504.4 Minimum Lot Area.

504.41 Single-Family Dwellings. Six thousand (6,000) square feet.

504.42 Two-Family Dwellings. Ten thousand (10,000) square feet.

504.43 Multi-Family Dwellings. Fifteen thousand (15,000) square feet plus three thousand (3,000) square feet for each Dwelling Unit in excess of two (2).

504.44 Ten thousand (10,000) square feet for all other Uses.

504.5 Minimum Lot Width.

504.51 Single-Family Dwellings. Sixty-five feet (65').

504.52 Two-Family Dwellings. Eighty feet (80').

504.53 Multi-Family Dwellings. One Hundred feet (100').

504.54 Other Uses. One Hundred feet (100') at Front Building line.

504.6 Minimum Lot Depth. One Hundred feet (100').

504.7 Minimum Front Yard. Twenty-five feet (25').

504.8 Minimum Side Yard.

504.81 Interior Side. Twelve feet (12').

504.82 Street side at Corner Lot. Seventeen and one-half feet (17.5').

504.9 Minimum Rear Yard. Twenty-five feet (25').

504.10 Maximum Building Height. Forty feet (40'). All proposed Buildings, other than Single-Family, must be approved by the authority having jurisdiction for fire code enforcement. Structures over thirty-five feet (35') in height will require special fire protection systems.

504.11 Off-Street Parking and Loading Regulations. See Article VII.

504.12 Screening Regulations. It shall be the responsibility of the property owner or lessee to provide the following screening measures:

504.121 Like or similar Uses abutting each other in different Districts: None.

504.122 Unlike or dissimilar Uses abutting each other in same or different Districts: Six foot (6') high closed Fence or evergreen vegetation of sufficient Density to serve the purpose of a solid Fence.

504.13 Signs. See Article VIII.

505 **I – Institutional District.**

505.1 Purpose. The Institutional Zoning District is established to permit certain institutional Uses.

505.2 Permitted Uses. See Section 500.

505.3 Special Uses. See Section 310.6.

505.4 Minimum Lot Area. Seven thousand five hundred (7,500) square feet.

505.5 Minimum Lot Width. Seventy-five feet (75').

505.6 Minimum Lot Depth. One hundred feet (100').

505.7 Yard Requirements.

505.71 Adjacent Lots within the Institutional District shall have no front, side, or rear Yard requirements except that a twenty five foot (25') Building Setback shall be required from the Right-of-Way lines of any adjacent Streets.

505.72 Lots within the Institutional District and abutting a different Zoning District shall be required to provide a twenty five foot (25') side, rear, and/or front Yard on the perimeter facing the different Zoning District.

505.8 Maximum Building Height. Sixty feet (60'). All proposed Buildings, other than Single Family Dwellings, must be approved by the authority having jurisdiction for fire code enforcement. Structures over thirty-five feet (35') in height will require special fire protection systems.

505.9 Off-Street Parking and Loading Regulations. See Article VII.

505.10 Screening Regulations. It shall be the responsibility of the property owner to provide the following screening measures:

505.101 Like or similar Uses abutting each other in different Districts: None.

505.102 Unlike or dissimilar Uses abutting each other in same or different Districts: Six feet (6') high closed Fence or evergreen vegetation of sufficient Density to serve the purpose of a solid Fence.

505.11 Signs. See Article VIII.

506 **WL - Woodland District.** That area outside the high and low pressure water service areas of the Town of Montreat that is indicated as Woodland District on the Official Zoning Map of the Town.

506.1 Purpose. This Zoning District is established to provide for agricultural Uses, including but not limited to grazing and fishing on land that because of extremes in topography and soils is unsuitable for residential, commercial, institutional or related development.

506.2 Permitted Uses. Agricultural Uses and enterprises. (See Section 500).

506.3 Special Uses. See Section 310.6.

507 **RPO - Ridge Protection Overlay District.** That area extending five hundred feet (500') on all sides of the summit of certain ridges in the Town as indicated on the Official Zoning Map of the Town of Montreat. The requirements of this section shall supplement the requirements of the underlying Zoning District as well as the provisions of the North Carolina Mountain Ridge Protection Act (N.C. G.S. Chapter 113A, Article 14). In case of conflict between the requirements of this section and any other law or regulation the more stringent provision shall apply.

507.1 Purpose. This Zoning District is established to protect sensitive woodlands on the ridge tops in and around the Flat Creek Basin which contains the Town of Montreat. Special protection is needed in these areas because of their high elevation, steep slopes and susceptibility to erosion that may adversely affect water supplies and aquatic life in the Town. Special protection is also needed to protect and preserve vistas in the Flat Creek Basin which are vital to the tourism component of the town economy and which are highly valued by residents of the Town as well.

507.2 Permitted Uses. Agricultural Uses and enterprises except logging and timber harvest. See Section 500.

507.3 Special Uses. None allowed.

508 **TCO - Town Center Overlay District.** That core area centered on Lake Susan which encompasses the majority of seasonal, community activity and Institutional facilities and Uses as indicated on the Official Zoning Map of the Town of Montreat. The requirements of this section shall supplement the requirements of the underlying Zoning District(s). In case of conflict between the requirements of this section and any other law or regulation the more stringent provision shall apply.

508.1 Purpose. This Zoning District is established to support and encourage specific permitted Uses representative of the core Institutional and Institutional/Residential Districts of Town. The Town Center of Montreat contains many significant historical buildings and other architectural features of interest. These touchstones define the unique character and rich heritage that residents and visitors alike have come to cherish.

508.2 Permitted Uses. See Section 500.

508.3 Special Uses. See Section 310.6.

508.4 Signs. See Article VIII.

509 **CD – Conservation District.** That area along Flat Creek from the Montreat Gate to Lookout Road and delineated on the Official Zoning Map of the Town of Montreat as Conservation District.

509.1 Purpose. This Zoning District is established to protect tracts of land from residential, commercial, and institutional development and to preserve land for parks, open space, recreational areas, greenways, trails, waterways and flood plain areas.

509.2 Permitted Uses. None.

509.3 Special Uses. See Section 310.6.

509.4 Signs. See Article VIII.

510 **Conditional Zoning District**

In addition to the zoning Districts delineated above, a Conditional Zoning District (bearing the designation CZ) corresponding to the zoning Districts may be established as authorized in this ordinance.

- 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 zoning Districts which are otherwise applicable. In addition to imposing the standards, restrictions and regulations provided for in the corresponding zoning District applicable to a parcel of property, a Conditional Zoning District may impose additional standards, restrictions and regulations as a condition to and as part of the legislative decision creating the District in exchange for reductions in otherwise applicable Setback and other site specific development standards and requirements of the applicable District.

510.1 **PURPOSE.** Conditional Zoning Districts are primarily intended to allow for the zoning and development of property in accordance with zoning District standards with additional and/or modified standards that enable the Use and development of the subject property in a manner which is better suited to the topography and other unique characteristics of the site and which is also consistent with the character of the Use and development of the 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 and standards, which promote and provide for the compatibility of the Use and development of the subject parcel with the Use and development of the neighboring properties. Zoning petitions to establish a Conditional Zoning District will be processed in accordance with the provisions of this zoning ordinance 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.

510.2. **USES WITHIN DISTRICT.** Within a Conditional Zoning District, only those Uses listed as permitted Uses in the corresponding 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. Special Uses shall require a Special Use Permit as required for the applicable zoning District.

### 510.3 CONDITIONS.

510.31 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 or other Structures; 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, or agrees to and which the town requests.

510.32 In considering 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.

510.33 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.

510.34 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.

510.35 All applications must include an exhibit map/schematic plan and supporting text which will become a part of the ordinance amendment, including the items listed below:

- (1) A site plan drawn to scale locating all proposed improvements, 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, 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 includes the number of units and an outline of area where the Structure will be located and **appropriate Setbacks**. For nonresidential Uses, this includes the approximate square footage of all Structures and an outline of the area where the Structures will be located.

510.36 The Planning and Zoning Commission and/or Town Board of Commissioners may request additional information as they deem necessary. This information **may include**:

- (1) Proposed screening, including walls, Fences, or planting areas as well as treatment of any existing natural features.
- (2) Existing and proposed topography at five-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) 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.

510.37 In approving a Conditional Zoning District, the Town Board of Commissioners may, 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.

510.38 Other than Use conditions, no proposed condition can be a mere repetition of an already applicable requirement of this ordinance. The Zoning Administrator may order the removal of any such condition.

510.4 **COMMUNITY MEETING.** With respect to all Districts, the applicant is required to hold a community meeting prior to the application deadline for a Conditional Zoning District rezoning. Notice of the meeting shall be provided to owners of property within 250' of subject property, as listed with the Buncombe County Tax Department. 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.

510.41 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 as a result of the meeting.

510.42 Revisions to an approved Conditional Zoning District necessitating a Public Hearing applicable to the Institutional/ Residential (I/R) and the Institutional (I) Districts shall also require a community meeting.

510.5 **SCOPE OF APPROVAL.**

510.51 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.

510.52 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.

- 510.53 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.
- 510.54 The approval of a zoning map or text amendment does not authorize any development activity. A Certificate of Zoning Compliance and any other administrative permits required by this ordinance shall be required, before the initiation of any development activity.
- 510.55 If an application for conditional zoning is approved, thereafter the development and Use of the property shall be governed by the standards, restrictions and regulations provided for in the corresponding zoning District, together with such changes, standards and conditions imposed by the Town Board of Commissioners.
- 510.56 If an application is approved, only those Uses and Structures 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.
- 510.57 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.
- 510.58 If requested by the applicant, an approved Conditional Zoning District plan shall be a Site-Specific Vesting Plan under N.C.G.S. Section 160D-108.1. A vested right in a development plan established pursuant to Section 510 of this Ordinance shall run for a period of two (2) years from the effective date of the approval of the Conditional Zoning District plan and may be extended for up to an additional two (2) years as recommended by the Zoning Administrator and approved by the Montreat Board of Commissioners.

## 510.6 ALTERATIONS TO APPROVAL.

510.61 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.

510.62 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 Density 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.

510.63 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 requiring a public hearing and Town Board of Commissioners approval under the circumstances. If the Planning and Zoning Commission declines to exercise this authority, then the applicant may only file a rezoning application in accordance with the applicable provisions of this Ordinance.

510.7 **PROCEDURE.** A Conditional Zoning District shall be established in accordance with all of the requirements and provisions of Section 510 of this Ordinance pursuant to the procedures for amendments as set forth in Section 309 of this Ordinance, so long as such procedures are consistent with and include the specific procedural requirements set forth in said Section 510. In the event of a conflict between the provisions of Section 309 and Section 510, those contained in Section 510 shall control.

## 511 **Planned Unit Development District (“PUD”)**

511.1 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. 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).

In return for greater flexibility, Planned Unit Developments are expected to deliver exceptional design, character and quality that preserve critical environmental resources and provide open space amenities. Such development shall 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.

511.2 The PUD District encourages innovative land planning and design concepts by:

511.21 Providing flexibility in the application of zoning and development standards or regulations that were designed primarily for individual Lots;

511.22 Allowing greater freedom in selecting the means to provide access, light, open space, and design amenities;

511.23 Allowing greater freedom for a broad mix of various land Uses in the same development;

511.24 Promoting quality design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations, and land Uses;

511.25 Encouraging quality design by allowing higher densities when such increases are supported by superior standards or the provision of additional amenities; and

511.26 Protecting health, safety and general welfare without unduly inhibiting the development of property.

511.3 A Planned Unit Development shall be a new zoning District that replaces the existing zoning District. The development standards and land Uses in the approved PUD Master Plan are the zoning regulations, standards, and land Uses for a PUD in the PUD District. The Official Zoning Map shall identify the area covered by each PUD District.

511.31 All Uses that are set out in the approved PUD Master Plan shall be treated as a permitted Use within the District.

511.32 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.

511.33 There is no minimum acreage required. However, the size of the PUD shall be evaluated by the Planning and Zoning Commission as warrants the location of the specific proposal.

511.34 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.

511.35 Development standards established by the approved PUD Master Plan shall be the applicable development standards within the PUD. Such standards shall include, but are not limited to, Building Height, building separations, building Setbacks, parking requirements, Lot size, Yard, Buffer and landscape requirements or other dimensional standards.

511.36 Development of property within a PUD is subject to all applicable Town regulations such as: subdivision plan approvals, site plan approvals, and other permits and approvals required by Town ordinances. The installation of transportation infrastructure shall be required in developing areas of the PUD as needed to serve that portions of the PUD.

511.4 **PROCEDURE**. A PUD zoning District shall be established through the process for rezoning property pursuant to the procedures for amendments as set forth in Section 309 of this ordinance. A pre-application meeting with the appropriate Town staff is required prior to formal submission of the application.

511.5 **REQUIREMENTS**

511.51 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. The PUD Master Plan shall include the following:

- a. a map, including parcel numbers, showing the parcels proposed for the PUD;
- b. a topographic map(s) for the property included in the proposed PUD;
- c. a list of permitted Uses proposed in the PUD;
- d. the locations of the proposed Uses;
- e. a summary of the amount, quantity, or gross density of those Uses proposed in the PUD;
- f. 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;
- g. a map(s) showing the locations of wetlands, stream Buffers, the 100 year floodplain, and slopes greater than 30%;
- h. a utility plan that includes the type and general location of the proposed public utilities;
- i. a plan addressing stormwater within the proposed PUD;
- j. proposed land development standards/regulations for the PUD,

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

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

511.53 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.

511.54 The Town Administrator or Board of Commissioners may require a Traffic Impact Analysis (TIA) to be conducted by the applicant and submitted as part of the rezoning application.

511.55 A mix of land Uses and/or residential character types may be included 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.

#### 511.6 **RECREATION AREAS AND OPEN SPACE**

511.61 General Requirement: The location and proposed amount of open space and recreation space shall be identified in the PUD Master Plan. The open space within a PUD may 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.

511.62 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.

511.63 Management of Recreation Areas 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 or the Montreat Retreat 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.

511.7 **LANDSCAPING AND BUFFERS**

511.71 Compliance with General Landscaping Requirements: Landscaping shall comply with the standards of Article IX 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.

511.72 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.

511.8 **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.

511.9 **AMENDMENTS TO THE PUD AND PUD MASTER PLAN** 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 shall be established through the process for rezoning property pursuant to the procedures for amendments as set forth in Section 309 of this Ordinance.

511.10 **SITE SPECIFIC VESTING.** If requested by the applicant, an approved PUD Master Plan shall be a Site-Specific Vesting Plan under N.C.G.S. Section 160D-108.1. A vested right in a PUD Master Plan established pursuant to Section 511 of this Ordinance shall run for a period of two (2) years from the effective date of the approval of the PUD Master Plan and may be extended for up to an additional two (2) years as recommended by the Zoning Administrator and approved by the Montreat Board of Commissioners.

512 **Lot Requirements Summary Table**

**Table 2: Lot Requirements Summary Table**

Zoning District and Use	Minimum Lot Dimensions			Minimum Yard/Setback		
	Size (sq. ft.)	Width (feet)	Depth (feet)	Front (feet)	Side (feet)	Rear (feet)
<b>R-1</b>						
Single-Family	10,000	75	100	30	15	**
Two-Family	15,000	75	100	30	15	**
Other Uses	15,000	75	100	30	25	**
<b>R-2</b>						
Single-Family	8,000	60	100	30	10	**
Two-Family	12,000	60	100	30	10	**
Other Uses	12,000	60	100	30	20	**
<b>R-3</b>						
Single-Family	20,000	75	100	30	15	**
Two-Family	30,000	75	100	30	15	**
Other Uses	30,000	75	100	30	25	**
Side/rear Yard Setbacks for Lots in R-1, R-2, and R-3 District with respect to the Frontage bordering the Woodland District: ten feet (10').						
<b>I/R</b>						
Single-Family	6,000	65	100	25	12/17.5	25
Two-Family	10,000	80	100	25	12/17.5	25
Multi-Family	15,000***	100	100	25	12/17.5	25
Other Uses	10,000	100	100	25	12/17.5	25
					interior/corner	
<b>I</b>						
All permitted Uses	7,500	75	100	None except 25' from Street Right-of-Way and when adjacent to a different Zoning District		

\*\* Minimum Rear Yard is 20% of the mean Lot Depth but no more than 35' in R-1 and R-3, or no more than 30' in R-2 for residential Uses.

\*\*\* For each unit in excess of two, an additional 3,000 sq. ft. is required per unit.

# ARTICLE VI – DEVELOPMENT

## PROVISIONS

600 **Use.** No Building, Structure or land shall hereafter be used or occupied and no Building or Structure or part thereof shall be erected, moved or structurally altered except in conformity with the regulations of this Ordinance for the Zoning District in which it is located.

600.1 No part of a Yard, off-street Parking or Loading Space, or other open space required in connection with any Building for the purpose of complying with this Ordinance shall be used and included as part of a Yard, open space, or off-street Parking or Loading Space similarly required for any other Building.

600.2 Rights-of-way or access Easements shall not be considered a part of a Lot or open space, or front, side, or rear Yard for the purpose of meeting Yard requirements.

601 **Lot Reduction Prohibited.** No Yard or Lot existing at the time of the passage of this Ordinance shall be reduced in dimension or area below the minimum requirement set herein. Yards or Lots created after the effective date of this Ordinance shall meet at least the minimum requirements set by this Ordinance.

602 **Every Lot must have Access to a Street.** No Building, Structure or Use of land shall be established on a Lot within the Town limits which does not have legal and physical vehicular access to a dedicated and accepted public Street.

In the Extraterritorial Jurisdiction, no Building, Structure or Use of land for other than agricultural purposes shall be established on a Lot which does not have legal and physical vehicular access to a dedicated and accepted public Street or to a platted roadway connected to a public Street.

For any Lot that does not abut a public Street or, in the case of the Extraterritorial Jurisdiction for any Lot that does not abut a public Street or platted roadway, no Building, Structure or Use of land shall be established on such Lot unless it has a legal Easement connecting such Lot with a public Street, which Easement must:

1. Have a minimum width of twelve feet (12’);
2. Be physically passable for vehicular traffic; and
3. Be an Easement of record and appurtenant to the Lot for which it provides access.

If the Street or platted roadway providing access to a proposed development does not meet the Town street standards for public Streets, the developer shall make the necessary improvements to bring the Street or road up to such Town standards.

603 **Minimum Lot Area.** The minimum Lot area shall be as specified in Article V for each Zoning District. In areas not served by a public or community sewer system, the minimum Lot area shall be determined by the Buncombe County Health Department. This minimum Lot area shall be that necessary for safe on-site waste disposal system, but in no case, shall the Lot be smaller than the required area for the Zoning District in which it is located.

604 **Height and Density.** No Structure shall hereafter be erected or altered so as to exceed the Density and height regulations of this Ordinance for the District in which it is located.

605 **One Principal Building per Lot.** Every Building hereafter erected, moved or structurally altered shall be located on a Lot and in no case shall there be more than one (1) Principal Building and its Accessory Buildings on the Lot. This section shall not apply to the Institutional District.

606 **Accessory Buildings and Uses.**

606.1 **GENERAL REQUIREMENTS.**

606.11 Accessory Buildings, other than Accessory Dwelling Units, as defined herein, shall not be used as a Dwelling Unit.

606.12 In residential zoning Districts, no more than two (2) Accessory Buildings or Uses shall be permitted per Lot.

606.13 Accessory Buildings larger than six hundred (600) square feet including entrance and/or outside covered areas or exceeding ten feet (10') in height at eave line shall only be permitted by Special Use Permit.

606.14 Accessory Buildings or Uses must meet the minimum Setbacks required by the applicable zoning District. Garages shall be located only in the side or rear Yards, unless as permitted in Section 606.2, and must meet the minimum Setbacks required by the applicable zoning District except under the provisions found in Section 606.2.

606.15 Accessory Buildings with any dimension greater than twelve feet (12') must meet the provisions of current NC State Residential Building Code.

606.2 **GARAGES IN FRONT YARD.** An owner of property in a residential District may apply for a Special Use Permit to build a Garage within the front Yard Setback subject to meeting all the following conditions:

606.21 The Zoning Administrator determines this will reduce damage to the natural topography, trees and natural green space, or where the topography will

create a hardship that would result in significant damage to the topography, trees and plant life without such relief;

606.22 The Garage will be constructed of materials that meet or exceed the quality and appearance of the principal Building.

606.23 The Garage must be enclosed by an operable Garage door to be maintained in good working order, excluding carports.

606.24 The Garage doors shall be kept closed when the house is unoccupied for more than one day; and

606.25 The property owner shall maintain the Garage and its appearance to reasonably remain in the condition it is in when completed and approved by the Building Inspector. The Zoning Administrator shall determine when this provision has been violated.

606.3 **PORTABLE STORAGE CONTAINER.** In addition to meeting the general requirements found in Section 606.1, Portable Storage Containers shall meet the following conditions:

606.31 Portable Storage Containers shall not be located or placed within any Easements or Street Rights-of-Way without the written permission and authorization of the Town.

606.32 Portable Storage Containers shall be used for storage incidental to the principal Use on the same Lot. Storage containers shall not be used for retail sales or any other principal Use.

606.33 A Portable Storage Container shall be allowed on a property for a continuous period of no more than one hundred and eighty (180) days per twelve-month period. Exceptions to this time limit may be made by the Zoning Administrator.

606.34 In Residential Districts (R-1, R-2, R-3), Portable Storage Containers shall not be more than eight feet (8') in width and not more than twenty-four feet (24') in length.

606.35 For an active construction project in the Institutional/Residential (IR) and Institutional (I) Districts, Portable Storage Containers shall not be more than ten feet (10') in width and not more than forty feet (40') in length and shall be allowed on a property for a continuous period of no more than two hundred and ten (210) days per twelve-month period.

606.4 **REASONABLE ACCOMMODATION.** In addition to meeting the general requirements of Section 606.1, a property owner may erect or install Accessibility Features within the required Yard Setback, subject to meeting all the following conditions:

606.41 The proposed accessibility improvements shall provide “reasonable accommodations” to avoid discrimination against individuals with disabilities. The intrusion upon the Setback will not exceed that which is practically required as determined by the Zoning Administrator.

606.42 Expansion of, or addition to, Decks and other appurtenant Structures beyond what is deemed necessary by the Zoning Administrator to provide reasonable accommodation for accessibility shall not be permitted.

606.43 Accessibility improvements designed and sited to occupy a portion of Street Right-of-Way fronting the property served are also subject to review for Administrative Approval by the Town Administrator prior to application for the associated construction permits.

607 **Corner Lots.** Any Structure on any Corner Lot abutting two Streets shall comply with the Minimum Front Yard Setback requirement for the Lot Frontage abutting the Street which the front of the Structure faces. Such Structure shall comply with fifty percent (50%) of the Minimum Front Yard Setback requirement for the Lot Frontage abutting the other Street. The Yard opposite the Yard for which the Minimum Front Yard Setback requirement is applicable shall meet the Minimum Rear Yard Setback requirement, and the remaining Yard shall meet the Minimum Side Yard Setback requirement. In case of doubt as to which Street the front of a Structure faces, or if a Structure is built so as not to face any Street, the Zoning Administrator shall determine the sides of the Structure for which the Minimum Front Yard, Minimum Rear Yard and Minimum Side Yard Setback requirements apply. The Setback requirements for Corner Lots having frontage on more than two Streets are set forth in Section 608 below.

608 **Double Frontage Lots.** For any Double Frontage Lot abutting two Streets that is not located on a corner, the minimum Front Yard Setback requirement shall be applicable to the Lot Frontage for each Street abutting such Lot. For any Double Frontage Lots abutting more than two Streets and any Corner Lot abutting more than two Streets, the Minimum Front Yard Setback requirement shall be applicable to at least two of the Lot Frontages of such Lot. The Setback requirements applicable to the Lot Frontage for the remaining Street or Streets shall be the Minimum Side Yard Setback. In cases of uncertainty, the Zoning Administrator shall determine which Minimum Yard Setback (side or rear) applies to which Lot Frontage. Provided, however, in the event that the Zoning Administrator determines that the application of either of the first two sentences of this Section 608 renders a Lot

unusable, then the Zoning Administrator may grant up to a fifty percent (50%) reduction in the Minimum Front Yard Setback requirement applicable to one of the two Lot Frontages. Such reduction shall only be applied to a Lot Frontage along a local Street, cul-de-sac or unpaved road, and shall not be applied to the Lot Frontage along an arterial or collector road.

609 **Special Front Yard Requirements in Developed Areas.** The front Setback requirements of this Ordinance shall not apply to any Lot where the average front Setback of already built-upon Lots located directly adjacent to, on either side of, and fronting on the same side of the Street as such Lot, is less than the minimum required front Setback for the District in which the Lot is located. In such case, the front Setback for such Lot may be less than the minimum required front Setback but not less than the average of the existing front Setbacks for the Lots located on each side of the subject Lot.

Should only one of the adjacent Lots have an existing Structure located upon it, which Structure is located less than the minimum required front Setback, and the other adjacent Lot either (a) has no Structure located upon it, or (b) has a Structure upon it which is located more than the minimum required Setback from the front Property Line, then, for averaging purposes, the minimum required front Setback shall be used for such other adjacent Lot.

Should there be only one buildable Lot adjacent to the subject Lot (for example, the subject Lot is a Corner Lot, or adjoins a public space, etc.) and should the sole adjacent Lot have an existing Structure located upon it, which Structure is located less than the minimum required front Setback, then the minimum required front Setback for the subject Lot shall be the same as the existing front Setback for the sole adjacent Lot.

Provided, however, in no event shall the minimum required front Setback be less than fifteen (15) feet.

610 **Nuisances and Hazards at Building Sites.** The holder of any Building Permit issued by the Town Building Inspector shall be responsible for maintaining the corresponding construction site free of rubbish, hazards, and unsightly conditions from the beginning of construction until occupancy. The Zoning Administrator (or his or her designee) or the Building Inspector shall determine if a hazardous or unsightly condition exists and notify the holder of the Building Permit of a violation of this ordinance in accordance with Section 307. The Town shall begin enforcement action if the situation is not corrected to the satisfaction of the Zoning Administrator within seven (7) days of notification. (For General Nuisances refer to the Montreat Code of General Ordinances, Chapter I, Article I.)



611 **Manufactured Homes.**

611.1 **PURPOSE.** To establish review guidelines for manufactured homes in order to insure that such homes will meet certain specifications and will provide pleasant living conditions while protecting adjacent property.

611.2 **LOCATION.** Any manufactured home established as a residence within the Town of Montreat after the adoption of this Ordinance may be located on a Lot in the R-1 Residential Zoning District. Manufactured homes used as residences on individual Lots shall be considered principal Uses for the purposes of this Ordinance and shall be subject to the criteria set forth in Section 611.4-611.5 below.

611.3 **EXEMPTIONS.** Manufactured homes on Lots may be exempt from the criteria in Section 611.4-611.5 providing that a valid Temporary Manufactured Home Placement permit is obtained from the Zoning Administrator. Each permit, when granted, shall be for one (1) calendar month, after which said permit can be renewed provided the below criteria are met.

611.31 When fire, flood, or other natural catastrophe makes an existing Single-Family Dwelling uninhabitable, the Zoning Administrator shall allow a manufactured home to be used on the same Lot as a temporary residence for a period not to exceed six (6) months.

611.32 During the active construction period of any construction project, the Zoning Administrator shall allow a manufactured home on the same Lot by the owner of the Lot for a period not to exceed twelve (12) months or the active construction period, whichever is less.

611.4 **CLASSES OF MANUFACTURED HOMES.** For the purposes of this Ordinance, manufactured homes shall be classed as follows: A manufactured home must meet all of the restrictions outlined under a particular class before it may be classified either A, B, or C.

611.41 **Class A.** This class of manufactured home shall be allowed as a Special Use in the R-1 Zoning District. In order for a manufactured home to be placed within this class, it must adhere to the following standards:

- 1) The unit must comply with National Manufactured Home Construction and Safety Standards adopted by the U. S. Department of Housing and Urban Development;
- 2) The unit must comply with the appearance criteria set forth in Section 611.5; and
- 3) The unit must not exceed a length to width ratio of 3:1.

611.42 Class B. This class of manufactured home shall be allowed as a Special Use in the R-1 Zoning District. In order for a manufactured home to be placed within this class, it must adhere to the following standards:

- 1) The unit must comply with National Manufactured Home Construction and Safety Standards adopted by the U. S. Department of Housing and Urban Development;
- 2) The unit must comply with the appearance criteria set forth in Section 623.5; and
- 3) The unit must not exceed a length to width ratio of 4:1.

611.43 Class C. This class shall not be allowed in the Town of Montreat and shall include all manufactured homes which cannot be classified as either Class A or Class B manufactured home.

611.5 APPEARANCE CRITERIA. Class A and Class B manufactured homes must meet the following criteria. Before issuing a Certificate of Occupancy for a Class A or a Class B manufactured home, the Zoning Administrator must certify the home meets the following appearance criteria.

611.51 Chassis Removal. The home shall have wheels, axles, transporting lights and towing apparatus removed.

611.52 Foundation. A continuous primarily masonry foundation, unpierced except for required ventilation and access shall be installed under all elements of the Structure. Footings for walls shall be below the frost line. The ground surface below the foundation shall be protected with a poly vapor barrier. Installation shall include positive surface water drainage away from the home.

611.53 Roofing. The home shall have a pitched roof and the roofing material must be compatible with residential construction within the area in which it is located.

611.54 Exterior Finish. The exterior materials shall be of a color, material, and scale comparable with those existing in residential construction within the area which it is located and in no case shall the degree of reflectivity of exterior finishes exceed that of gloss white paint. Siding, trim, and features should be compatible with those existing in residential construction within the District in which it is located.

612 Regulations for Cut and Fill Slopes. Cut and fill slopes shall not exceed a 1:1 cut and 1.5:1 (horizontal distance: vertical distance). However, if stable exposed rock is the intended result, the cut and/or fill slope may be increased with approval of the Zoning

Administrator and supporting recommendation from a North Carolina-registered professional engineer. (Note. The Hillside Development Ordinance applies to certain cut and/or fill slopes.)

613 **Drainage.** A culvert of sufficient capacity or other means of drainage to control storm water runoff is required for each driveway or roadway connected to any public or private road in the Town of Montreat. Consultation is required with the Public Works Director regarding the type, material, placement, and method of installation of each such drainage facility. Written plans for drainage will be submitted to the Zoning Administrator for zoning compliance approval. (**Note:** The Stormwater Management Ordinance may have additional regulations.)

613.1 **Sedimentation Control.** All land disturbing activity is to be planned and conducted so as to prevent off-site sedimentation and storm water runoff damage.

614 **Agricultural Uses.** Agricultural enterprises are allowed in certain Districts in the Town. Such Uses are allowed with the understanding by the Town that the land will be managed in such a way as to generate no off-site adverse effects such as sedimentation or other water pollution. As a general rule, grazing a horse on less than two acres is likely to produce such adverse effects. The Town Zoning Administrator is authorized to investigate reports of adverse off-site impacts of any land Use and to report such activities to appropriate regulatory agencies.

615 **Parking and Storage of Travel Trailers, Campers and Recreational Vehicles.**

615.1 **PARKING ON PRIVATE PROPERTY.** No travel trailer, camper or recreational vehicle shall be used as a residence in the Town.

- 1) Exceptions to the requirements of this section shall be made for any visitor of a property owner of the Town when the visitor parks the travel trailer, camper, or recreational vehicle on property of such owner, with the permission of the owner and for a period not to exceed seven (7) days per year. No more than one such travel trailer, camper, or recreational vehicle occupied by visitors shall be allowed to park on any Lot in the Town.
- 2) The provisions of this section shall not be interpreted to prevent the storage or occasional use of a vacant travel trailer, camper, or recreational vehicle at a residence in the Town by the owner of that residence. Occasional use shall mean not more than seven days in succession nor more than four times in a twelve month period.
- 3) No travel trailer, camper, or recreational vehicle shall be offered for rent or lease on a short or long term basis in the Town.

615.2 **PARKING ON PUBLIC PROPERTY PROHIBITED.** No person shall park a travel trailer, camper, or recreational vehicle for the purpose of overnight habitation on any public property in the Town including but not limited to public Streets, Street rights-of-way, walkways, sidewalks, parking Lots, and any other public area.

616 **Approval for Construction in Rights-of-Way.** Town Rights-of-Way are reserved for public purposes such as Streets, Street shoulders, utility facilities, Alleys, future Street improvements, bikeways, walkways, driveway connections, drainage, and plantings for beautification. Any and all construction in Town Rights-of-Way is prohibited without the prior written permission of the Town Administrator. At the discretion of the Zoning Administrator and the Town Administrator, private construction projects that produce a public benefit may be allowed in Town Rights-of-Way (for example: a retaining wall that keeps a drainage ditch clear.) No private improvements on Town Rights-of-Way shall be allowed which will interfere with existing or future public benefits of Town Rights-of-Way.

617 **Driveway and Walkway Connections.** To the greatest extent practicable, and unless otherwise approved by the Town, driveway and walkway connections to public Streets shall be made within the Right-of-Way adjacent to the front of the Lot in the area located between the lines extending perpendicular from the existing roadway to each side Property Line at the corners closest to the Street. If existing conditions or other factors, including but not limited to excessively steep gradient or stormwater control considerations pose inordinate difficulty for, or preclude, a driveway connection to the public Street solely within the frontage area described above, application shall be made to the Board of Adjustment seeking a Variance from the provisions stated herein. The Variance requirement shall be waived if an Easement is granted by the neighboring landowners(s) permitting driveway access through the neighboring owner's Lot.

618 **Fences.**

618.1 **NEW FENCE REQUIREMENTS.** All new Fences installed after the effective date of this Ordinance shall comply with the following requirements:

618.11 Except for front yard Fences permitted by subsection 2) below, Fences shall be installed in the area comprised by (a) the rear yard of a Lot, and (b) that portion of the side yards of the Lot extending from (i) lines drawn from each of the front corners of the Principal Building on the Lot to the nearest side Property Line at its nearest point, to (ii) the rear Property Line. Provided, however, that in the event the rear Property Line or the side Property Line of a Lot is adjacent to a Street, no portion of the Fence shall be located in the Minimum Rear Yard or Minimum Side Yard, as applicable.

- 618.12 Decorative Fences shall be permitted in front yards provided (a) they are of picket construction, and (b) they are not constructed higher than thirty-six inches (36") above natural grade. In Institutional and Institutional/ Residential Zoning Districts, the Zoning Administrator may approve opaque Fences constructed higher than thirty-six inches (36") in front yards which screen propane tanks, HVAC equipment and similar unsightly Building appurtenances so long as landscaping is installed in accordance with the requirements set forth in subsection 618.13 below to provide a visual buffer from public view.
- 618.13 For Fences facing Streets (including without limitation Fences constructed in side yards facing Streets), landscaping vegetation shall be installed so that no more than one-third (1/3<sup>rd</sup>) of the exterior Fence surface area shall be visible from the Street within three (3) years. No more than forty percent (40%) of the landscaping material may be deciduous. Decorative Fences that are at least thirty percent (30%) open shall be exempt from this landscaping requirement.
- 618.14 Fences shall be constructed of the following materials: (i) wood of natural color, white (or other light color matching the exterior of the Dwelling on the applicable Lot), black, dark green or brown, (ii) metal (except for chain link or wire), plastic or composite materials designed for residential fencing purposes and colored white (or other light color matching the exterior color of the Dwelling on the applicable Lot), black, dark green or brown, (iii) chain link or other wire material designed for residential fencing purposes and colored black, dark green or brown, or (iv) brick, stone, cast-stone or decorative block. Colors other than white (or other light color matching the exterior color of the Dwelling on the applicable Lot), black, dark green and brown may be utilized if approved by the Zoning Administrator.
- 618.15 Fences shall not be constructed higher than five feet (5') above natural grade, except and provided that in Institutional and Institutional/ Residential Zoning Districts, the Board of Adjustment may approve as a Special Use Fences constructed higher than constructed five feet (5') either (i) in front yards as provided in subsection 2) above, or (ii) in side or rear yards to screen propane tanks, HVAC equipment and similar unsightly Building appurtenances or for special security or safety needs, so long as landscaping is installed in accordance with the requirements set forth in subsection 618.13 above to provide a visual buffer.
- 618.16 No Fence shall be constructed in a drainage easement without the permission of the Zoning Administrator.

618.17 No Fence shall be constructed in a utility easement without the permission of all utility companies that operate and maintain lines and/or facilities in the easement.

618.18 Notwithstanding anything herein to the contrary, no Fence shall be located, constructed or maintained in such a way as to obstruct the view of motorists or pedestrians using any streets, private driveways, parking aisles or the approach to any street intersection, or otherwise so as to constitute a traffic hazard.

618.2 Battery-Charged Security Fences are prohibited on properties within the R-1, R-2, and R-3, Zoning Districts. A Battery-Charged Security Fence shall:

1. Interface with a monitored alarm device enabling the alarm system to transmit a signal intended to summon the business or law enforcement in response to an intrusion or burglary.
2. Be located on property that is not designated by the Town and/or another local government as exclusively for residential use.
3. Have an energizer that is powered by a commercial storage battery that is not more than 12 volts of direct current.
4. Meets the standards established by the most current version of the International Electrotechnical Commission Standard 60335-2-76.
5. Be surrounded by a non-electric perimeter fence or wall that is not less than 5 feet in height.
6. Not exceed 10 feet in height or 2 feet higher than the non-electric perimeter fence or wall, whichever is higher.
7. Marked with conspicuous warning signs that are located on the Battery-Charged Security Fence at not more than 30-foot intervals and read: "WARNING—ELECTRIC FENCE."

618.3 **PROHIBITED FENCES.** Battery-Charged Security Fences prohibited by and/or not in compliance with Sec. 618.2 above, and sharp metal or glass Fences are prohibited. Barbed wire Fences are prohibited except only for special security or safety needs (such as to limit access to high towers, electrical high voltage sites, hazardous equipment and the like).

618.4 **EXISTING FENCES.** All existing fencing that is replaced shall meet the requirements for new fencing.

619 **Accessory Dwelling Units.** The purpose of an Accessory Dwelling Unit is to:

- (a) Provide flexible housing options for residents and their families:
- (b) Integrate affordable housing into the community with minimal negative impact:
- (c) Provide elderly citizens with the opportunity to retain their homes and age in place.

619.1 **STANDARDS**

1. An Accessory Dwelling Unit shall be located only on a residential Lot containing one Single-Family detached Structure. The residential Lot may contain other accessory Structures as provided in this ordinance.
2. Only one Accessory Dwelling Unit shall be permitted per Lot.
3. No Accessory Dwelling Unit shall exceed the height of the principal Structure.
4. The Accessory Dwelling Unit shall meet the appropriate Setbacks.
5. The Accessory Dwelling Unit shall be clearly subordinate to the main Structure.
6. The Accessory Dwelling Unit must contain complete kitchen facilities including a stove or cook top and a full bath including lavatory, water closet, and tub or shower (or combination).
7. At least one Parking Space shall be provided in addition to those required for the principal Dwelling.
8. Manufactured housing, campers, travel trailers and recreational vehicles are not permitted for Use as an Accessory Dwelling Unit.
9. An Accessory Dwelling Unit shall be occupied by no more than four (4) persons.

620 **Home Occupation**620.1 No person other than members of the Family residing on the premises shall be engaged in such occupation; except one non-resident employee may work in the Home Occupation.

620.2 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;

620.3 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) non-illuminated sign, not exceeding a four (4) square foot area.

620.4 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 Setback.



# ARTICLE VII – PARKING AND LOADING REGULATIONS

700 **General Statement.** The Town of Montreat is a unique community that features and includes: (i) a conference center; (ii) a college, (ii) inns, (iii) gymnasiums, playgrounds, tennis courts and other athletic and recreational facilities; (iv) scenic areas and trails; (v) offices and other supporting facilities; and (vi) residential areas for Single-Family and Multi-Family Use, dormitories and apartments (collectively the “Usages”). Many of these facilities and the parking lots, spaces, Structures and facilities that support them have existed for decades and it would be difficult and expensive for the owners and/or operators thereof to add or reconfigure onsite and offsite parking beyond that which is presently in use and serving such facilities.

Therefore, it is the intention of the Town of Montreat that as to all of the Usages existing on the Effective Date, the parking serving such Usages shall be Non-Conforming Uses of a Structure allowed in accordance with Article X of this Ordinance, and only with respect to construction of additional Structures or substantial expansion, modification or alteration of existing Usages, shall the additional parking be required by this Article. It is also noted that in many cases parking facilities for conference center and college buildings can be combined to support more than one facility or Usage, instead of new or additional spaces being required for each separate Building or facility.

It is the intention of the Town of Montreat that off-street parking areas shall be required at the time of initial construction of any new Building or at the time of any expansion of an existing Building that produces an increase in Dwelling Units, guest rooms, Floor Area, seating or bed capacity, or when a conversion in Use occurs. Such off-Street parking areas shall be provided and maintained in accordance with the requirements set forth herein. The requirement for additional off-Street parking areas to supplement existing parking shall apply to new construction or modifications to existing Buildings resulting in increases in Net Floor Area or changes in Use or occupancy classification. The requirement for additional parking shall be based upon the increased Net Floor Area or change only and related solely to the need for increased parking resulting from the increases in Net Floor Area or changes in Use or occupancy classification.

701 **Parking Area Construction Standards.** With the exception of Sections 701.1 and 701.6 below, Single-Family and Two-Family residential Uses shall be exempt from the parking area construction standards unless specifically referenced. As stated in Section 700 above, entrances, Parking Spaces/areas, aisles or driveways in existence on the Effective Date which do not meet the specific provisions contained herein shall nevertheless be Non-Conforming Uses of a Structure in accordance with Article X of this Ordinance.

701.1 **PARKING SPACE REQUIREMENTS.** For the purpose of this Ordinance, Parking Space dimensions (other than those designed to be handicap accessible) shall be as follows:

701.11 A standard car Parking Space is nine feet (9') wide and eighteen feet (18') long.

701.12 A compact car Parking Space is eight feet (8') wide and sixteen feet (16') long.

701.13 Parallel Parking Space dimensions shall be a minimum of eight feet (8') wide and twenty feet (20') long.

701.2 **ENTRANCES (SOMETIMES "AISLE") AND DRIVEWAY WIDTHS.** No two-way entrance aisle or driveway shall be greater than twenty-four feet (24') wide. In no event shall an entrance be greater than twelve feet (12') for one-way traffic.

701.3 **SURFACING.**

701.31 All vehicular Parking Spaces shall be constructed of durable, dustless surface as defined herein unless otherwise approved by the Zoning Administrator and shall comply with the remaining requirements of this section for durable, dustless surfaces.

701.32 The installation of a durable, dustless surface may be temporarily delayed upon approval of the Zoning Administrator whenever it can be shown by the property owner or developer that the permanent size, shape or location of the parking area cannot be determined until the construction of a Building or permanent development of the property is completed. In those instances where a nondurable, non-dustless surface is approved, such surface shall at all times be maintained in good condition and free of ruts, potholes and vegetation. Failure to properly maintain such area shall be sufficient cause for the Zoning Administrator to require the owner to construct a durable, dustless surface.

701.33 For the purposes of this Section, a durable, dustless surface shall be constructed of concrete, asphalt, macadam, brick or similar material or special paving brick or block or structural grid material of such design as to permit the passage of water freely through the brick or block or permit the cultivation of grass within the voids thereof.

701.34 Loose stone or compacted stone without a suitable bonding agent may be acceptable as a durable, dustless surface if incorporated as part of an approved engineered pervious surface designed to accept the associated vehicular loads.

701.35 Notwithstanding any other regulation adopted by the Town, engineered pavement design standards that do not meet minimum standards required by the Department of Transportation shall be accepted if the proposed design standard is signed and sealed by a duly licensed professional engineer, under Chapter 89C of the North Carolina General Statutes, and meets vehicular traffic and fire apparatus access requirements. This subsection applies to construction of new privately owned driveways, parking lots, and driving areas associated with parking lots within a new development or subdivision that the developer designates as private and that are intended to remain privately owned after construction. If driveways, parking lots, and driving areas associated with parking lots are constructed to pavement design standards that do not meet minimum standards required by a regulation adopted by the local government, as authorized by this subsection, the developer must include disclosures to prospective buyers as outlined in N.C. Gen. Stat. § 136-102.6(f) prior to entering into any agreement or any conveyance with any prospective buyer.

701.4 **CURBING.** The Town of Montreat encourages Low Impact Development (LID) and other innovative stormwater management techniques. Conventional curbing may be waived by the Town if alternative designs are approved and incorporated to encourage sheet flow drainage into pervious areas, or otherwise designed as part of an overall engineered stormwater retention/treatment system. All non-exempt residential and non-residential paved parking areas not utilizing approved alternative techniques shall be curbed using a standard curb with a minimum width of six inches (6") and may include a horizontal drain support/gutter having a minimum width of one foot (1').

Off-street parking areas shall be designed so that (i) parked vehicles do not encroach upon or extend onto Town Rights-of-Way, or sidewalks, and (ii) vehicles do not strike against or damage any wall, vegetation, utility, or other Structure. Such off-street parking areas shall be provided and maintained in accordance with the requirements set forth herein.

701.5 **MARKINGS AND SIGNAGE.** All non-exempt residential and non-residential paved Parking Spaces/areas shall be clearly delineated and identified by use of reflective paint, signage or other durable surface treatment as approved by the Town. Signage shall be Engineering Grade Prismatic (EGP) reflective finish designed in compliance with the current effective Manual on Uniform Traffic Control Devices (MUTCD) available for review at the Town Services Office. Accessible spaces for use by persons with disabilities shall be provided in conformity with the current effective North Carolina State Building Code and ADA standards. Compact car, bicycle, and other special-use Parking Spaces, if constructed or erected, shall be clearly identified and located to facilitate use by residents and/or the public.

Parking areas shall be constructed with a well-maintained traffic directional system and proper drainage.

701.6 **STORMWATER MANAGEMENT.** All newly-installed parking lots, regardless of surfacing, shall retain stormwater onsite or direct flows to systems designed to effectively remove pollutants and promote infiltration and recharge of the subsurface aquifer. (**Note:** The Stormwater Management Ordinance may also apply to parking spaces.)

701.7 **LANDSCAPING.** Landscaping requirements are set forth in Section 903 of this Ordinance Code.

701.8 **PERMITTED SLOPE.** With respect to new construction: (i) no grade within a commercial or institutional parking area (excluding portions thereof used for driveway purposes) shall exceed sixteen percent (16%) slope; and (ii) residential parking areas shall not exceed twenty percent (20%) slope. Driveway areas that exceed 20% slope and/or which do not provide adequate turnaround width for parked vehicles shall not be included in calculation of required Parking Spaces. Accessible Parking Spaces, as defined by the current effective North Carolina State Building Code and ADA standards shall not exceed a surface slope of two percent (2%) at any point. (**Note:** The Hillside Development Ordinance may also apply to slope.)

702 **Off-Street Parking Space Requirements.** Off-street Parking Spaces shall be provided for the Uses listed below as specified.

702.1 **SINGLE-FAMILY DWELLINGS, TWO FAMILY DWELLINGS, AND MULTI-FAMILY DWELLINGS.** The total number of required Parking Spaces for residential Structures shall be calculated by considering heated square footage as follows: Two (2) spaces required per Dwelling Unit up to 2500 square feet. One (1) additional space required for each additional 1000 square feet or portion thereof above 2500. For existing residential Structures as of the date of adoption of this Ordinance, one (1) additional Parking Space shall be required for each 1000 square feet (or portion thereof in excess of 500 square feet) that is added to the Structure. By way of example, if 500-1499 square feet is added, one (1) additional space is required; if 1500-2499 square feet is added, two (2) additional spaces are required.

702.2 **BED AND BREAKFASTS, BOARDING HOUSES, AND HOTELS.** A minimum of one (1) standard car Parking Space for resident owner or manager is required, and a minimum of one (1) standard space per Dwelling Unit or rooming unit. Ten percent (10%) of the total number of required standard spaces may be met through installation of compact car spaces.

702.3 **DORMITORIES.** One (1) standard space is required per each two (2) persons in the dorm based on full occupancy. Ten percent (10%) of the total number of required standard spaces may be met through installation of compact spaces.

- 702.4 **OTHER OCCUPANCIES/USES.** One (1) standard space is required per 1,000 square feet of Gross Floor Area. Ten percent (10%) of the total number of required standard spaces may be met through installation of compact car spaces.
- 703 **Bicycle Parking.** Providing for bicycle parking is encouraged but not required.
- 704 **Shared Parking.** Shared parking may be approved under the following conditions:
- 704.1 Adjacent parking areas serving non-residential Buildings must be interconnected.
- 704.2 Ordinarily only two (2) facilities/Buildings that meet the conditions stated in this section may utilize shared parking for a given parking lot/area, but the Zoning Administrator may approve shared parking for more than two (2) Buildings pursuant to an approved Development Plan.
- 704.3 Where vehicular access is provided between adjoining non-residential Uses and the operating hours of adjoining Uses do not overlap, all of the required Parking Spaces (up to 100%) may be shared. For example, if a church, theater, assembly hall or other Use with peak hours of attendance at night or on Sundays, is located next to another Use or Uses that are closed at night or on Sundays, both Uses may be able to take advantage of this option.
- 704.4 If the operating hours of two (2) adjoining non-residential Uses overlap five or fewer hours each day, half of the required Parking Spaces (up to 50%) may be shared.
- 704.5 Where shared parking is being utilized to satisfy the parking requirements for new construction or the expansion of existing facilities/Buildings, the owners of the adjoining Uses shall have shared parking Easements or agreements in place providing them with an enforceable legal right to use the shared spaces as represented to the Town.
- 705 **Use of Public Streets for Parking.** When determining parking area requirements for individual Uses, portions of public Streets may not be considered as permissible for parking unless part of an overall parking plan developed to accommodate new construction, alterations to, or changes in Use of, existing Buildings, and as provided for below:
- 705.1 Requests for approval of new parallel parking or diagonal Parking Spaces in the I and I/R Districts of Town are subject to review and approval on a case-by-case basis by the Town Administrator.
- 705.2 Residential Buildings may meet or contribute to meeting motor vehicle parking requirements with on-Street parking if individual driveways are minimized and the

fronting Street is sized or specifically designed to accommodate the parking needs of residential Buildings. On-Street parking shall be permitted by the Town Administrator. Owners of residential Buildings who use public Street Parking Spaces are subject to the following provisions: (i) their use of public Street Parking Spaces is non-exclusive and continued access by the public shall be maintained; and (ii) no private signage shall be permitted that restricts public use of designated on-Street Parking Spaces or areas.

706 **Structured Parking.** Any above or below-ground Structure, covered or uncovered, constructed for the purpose of providing parking for one or more cars, shall be considered a Structure for all purposes of this Ordinance, specifically including Article III.

707 **Off-Street Loading Regulations.** Every Building, excluding Single-Family and Two-Family, shall provide space for the loading and unloading of vehicles off the Street. Such space shall have access to an Alley or if there is no Alley, to a Street. Required space shall be considered as follows:

707.1 Multi-Family Dwellings with more than ten Dwelling Units: One (1) Loading Space.

707.2 All other Uses: Each applicant shall submit a Loading Space and driveway plan with data demonstrating the adequacy of the facilities proposed in the plan. The plan is subject to approval of the Zoning Administrator.

# ARTICLE VIII – SIGNAGE

800 **Purpose.** The purposes of this Article are: (i) to permit such Signs in the Town of Montreat that will not, by their reason, size, location, construction, or manner of display, confuse or mislead the public, obstruct the vision necessary for traffic safety, or otherwise endanger public health and safety; and (ii) to permit and regulate Signs in such a way as to support and complement land-use objectives set forth in the Zoning Ordinance for the Town of Montreat.

801 **General Regulations.** The following regulations shall apply to all Signs in all Zoning Districts:

801.1 **COMPLIANCE.** No Sign of any type shall be constructed, erected, painted, posted, placed, replaced, or hung in any District except in compliance with this Ordinance.

801.2 **MAINTENANCE.** All Signs, together with braces, guys and supports shall at all times be kept in good repair. If at any time a Sign should become unsafe or poorly maintained, the Zoning Administrator shall send written notice to the owner of the Sign that the Sign must be repaired, maintained or removed. Upon failure of the owner to correct such condition within thirty (30) days of such notice, the Zoning Administrator shall proceed with enforcement action pursuant to Section 801.9.

801.3 **REMOVAL OF OBSOLETE SIGNS.** Signs identifying establishments no longer in existence, products no longer being sold, and service no longer being rendered shall be removed from the premises within ten (10) days from the date of termination of such activities. Temporary Signs, pole-mounted banners giving notice of seasonal or special events, and political Signs shall be removed within two (2) days after termination of the event or election advertised. Upon failure of the owner of these Signs to remove such Signs within the prescribed time period, the Zoning Administrator shall proceed with enforcement action pursuant to Section 810.9.

801.4 **MEASUREMENT OF AREA; HEIGHT.** Sign area shall be computed by means of the smallest square, circle, rectangle, triangle, or combination thereof which will encompass the entire advertising copy or art designed to attract attention including borders and other architectural embellishments. Sign height shall be measured from the Street grade of the closest point in the Street along which the Sign is located or the average grade at the base of the Sign, whichever is higher, to the highest point of the Sign Structure.

801.5 **BUILDING CODE COMPLIANCE.** All commercial Signs shall fully comply with the requirements of the North Carolina State Building Code and National Electrical Code (NEC). A Building permit shall be required for any projecting Sign attached to a Building or Structure which has a surface area in excess of six (6) square feet.

An electrical permit is required for any internally or externally illuminated Sign powered by electrical sources regulated by requirements of the NEC.

801.6 **SIGN SETBACK REQUIREMENTS.** No projecting portion of any free-standing Sign may be located closer than two feet (2') to any vehicular or pedestrian traveled way. For the purposes of this Ordinance, house numbers and nameplates shall be exempt from this Setback requirement.

801.7 **ILLUMINATION OF SIGNS.** Unless otherwise expressly prohibited, Signs may be illuminated from above at a downward angle provided that lighting directed toward a Sign shall be shielded in such a manner as to illuminate only the face of the Sign, and shall not project light into any portion of the traveled roadway or toward neighboring Buildings.

801.8 **SIGN PERMIT REQUIRED.** A Sign permit, issued by the Zoning Administrator shall be required for all Signs except those specified in Section 803 and Section 804. No permit shall be issued until the Zoning Administrator inspects plans for such Signs and determines that they are in accordance with the requirements contained in this Article. The fee schedule for Sign permits shall be set forth in the Town of Montreat Fee Schedule.

801.9 **ENFORCEMENT OF REGULATIONS.** Any Sign constructed after the Effective Date or any Sign maintained in a non-conforming manner shall be subject to the following actions:

801.91 **Notice.** The Zoning Administrator shall notify in writing the following persons of the non-conforming Sign:

1. The owner of the Sign;
2. The owner of the property on which the Sign is located; and;
3. The occupant of the property on which the Sign is located.
4. Notice shall be given to the above persons that the non-conforming condition must be corrected within thirty (30) days from the date of notification.

801.92 **Penalties.** Penalties for these requirements are specified in Section 307.

801.93 **Appeals.** Any person having an interest in a Sign found to be non-conforming, or the property on which it is located, may appeal to the Board of Adjustment a determination by the Zoning Administrator ordering removal or compliance, as provided in Section 310 of this Ordinance.

801.94 **Removal.** If the non-conforming Sign has not been removed or brought into compliance with the provisions of this Ordinance within the allotted thirty (30) days and if no appeal has been taken, as specified above, then said Sign



shall be removed by the Town and the cost of removal shall be billed to the owner of the Sign.

801.95 Failure to Pay Removal Costs. (a) Pursuant to N.C.G.S. § 160A-193, if the Zoning Administrator determines that a Sign removed by the Town was dangerous or prejudicial to the public health or safety and the owner of the Sign has not paid the costs of removal within thirty (30) days of the billing date, then a lien in the amount of the costs of removal shall be placed on the real property where the removed Sign was located, and shall be collected as unpaid ad valorem property taxes. (b) If no determination of danger or prejudice to the public health or safety is made, then the costs of removal shall be collected by the Town in a civil action in the nature of a debt.

802 **Prohibited Signs.** The following Signs are prohibited, unless otherwise expressly permitted in this Ordinance:

802.1 Signs Constituting Traffic Hazards. Any Sign located in a manner or place so as to constitute a hazard to vehicular or pedestrian traffic as determined by the Zoning Administrator.

802.2 Signs in Street Right-of-Way. Any free-standing Sign located in a Street right-of-way or projecting over into a Street Right-of-Way. One house number and/or name plate shall be permissible for each Dwelling.

802.3 Signs Obstructing Passages. Any Sign that obstructs or substantially interferes with any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress for any Building.

802.4 Off-Premises Advertising Signs. Billboards and other types of off premises advertising Signs.

802.5 Flashing Devices. Any flashing device or Sign displaying flashing or intermittent lights or lights of changing degrees of intensity.

802.6 Moving Devices. Any commercial Use of moving Signs or device to attract attention, all or any part of which moves by any means, including motion by the movement of the atmosphere or by electrical or other means, including but not limited to, pennants, flags, propellers, or discs, whether or not any said device has a written message.

802.7 Posted Signs. Any Sign posted to utility poles, trees, Fences, rocks or other Signs. Honorarium Signs meeting the requirements of 805.25 are not prohibited under this

section. House Number and Nameplate Signs meeting the requirements of 804.7 are not prohibited under this section.

802.8 Copies of Official Signs. Any Sign which is a copy or an imitation of an official Sign, or which purports to have official status but does not have an official purpose.

802.9 Portable Signs. A Sign that is not permanently affixed to a Building, Structure or the ground.

802.10 Roof Signs. Any Sign which is affixed to the roof of a Building or Structure.

802.11 Signs Not Permitted. Any Sign not expressly permitted or exempted elsewhere in this Ordinance.

803 **Exempt Signs.** The following Signs are exempt from the provisions of this Ordinance:

803.1 **GOVERNMENTAL AGENCY SIGNS.** (i) Signs erected or maintained by a governmental agency to regulate, control or direct traffic including Wayfinding Signs, Signs indicating bus stops, parking areas, and similar transportation facilities, or Signs employed to serve as a directory for services that may be found within the Town; and (ii) informational kiosks that provide maps and locational information. Such Signs may be illuminated, flashing, or moving as required for public safety. Furthermore, Signs erected by a governmental agency which convey information regarding a public service, or the location of a public facility may also be illuminated as necessary.

803.2 **SIGNS REQUIRED BY LAW.** Signs erected pursuant to federal, state, or local laws or ordinances.

803.3 **WARNING SIGNS.** Signs which warn of hazards to life, limb, and property such as high voltage electrical equipment, explosives and the like.

803.4 **MONTREAT CONFERENCE CENTER SIGN STRUCTURE NEAR GATE.** The longstanding Montreat Conference Center Sign Structure containing approximately five sign panels is permitted. Sign panels may be changed as and when necessary. If destroyed by casualty or other cause, such sign structure may be reconstructed consistent with its previous size and design. A change in the design or size of the Montreat Conference Center sign structure is subject to approval of the Zoning Administrator.

804 **Signs Allowed Without a Permit.** The following types of Signs shall be permitted in any Zoning District without the issuance of a sign permit provided they meet the stated requirements:

804.1 **TEMPORARY REAL ESTATE SIGNS.** Temporary real estate Signs advertising a specific piece of property for sale, lease, rent, or development, located on said property, provided such Signs shall not exceed six (6) square feet in surface area per side. Signs shall not be illuminated and shall not exceed one (1) per parcel of land unless such land is located at an intersection of two Streets; in such a case, two Signs shall be allowed, one facing each Street.

804.2 **SIGNS ON WINDOW GLASS.** Signs on window glass, regardless of size.

804.3 **PRIVATE REGULATORY SIGNS.** Private, unofficial regulatory Signs not exceeding two (2) square feet in surface area per side, which indicate directions, entrances and exits, available parking facilities, no smoking, control of pets and other similar requirements. Such Signs shall be located entirely on the property to which they pertain and shall not contain any advertising message.

804.4 **CONSTRUCTION SIGNS.** One (1) construction Sign per construction project not exceeding sixteen (16) square feet of Sign area in residential Zoning Districts or thirty two (32) square feet in the Institutional or Institutional/Residential Zoning Districts, provided that such Signs shall be erected no more than five (5) days prior to the beginning of construction for which a valid Building Permit has been issued, shall be confined to the site of construction, and shall be removed five (5) days after completion of construction and prior to occupancy.

804.5 **PUBLIC NOTICE.** Official notices posted by public officers or employees in the performance of their duties.

804.6 **HOUSE NUMBER SIGNS.** Street address numbers must be clearly displayed so that the location can be identified easily from the road. Every property owner of improved property shall purchase and display in a conspicuous place on said property the number assigned.

804.61 The official address number must be displayed on the front of a Building or at the entrance to a Building which is most clearly Visible from the Street or road during both day and night.

804.62 If a Building is more than seventy-five feet (75') from any road or if two or more homes use the same entrance, the address number(s) shall be displayed at the end of the driveway or Easement nearest the road which provides access to the Building(s)

804.63 Numerals indicating the address number shall be at least three (3) inches in height and shall be posted and maintained so as to be legible from the road.

804.64 Numerals must be of contrasting color to the background. Reflective numbering or placing reflective dots at the Sign to direct attention to it is encouraged.

804.65 The Zoning Administrator will have the right to authorize and approve alternate methods of displaying house numbers which meet the intent of this Ordinance when strict adherence to these standards cannot reasonably be met.

804.7 **RESIDENTIAL NAMEPLATE SIGNS.** Residential nameplate Signs are permitted and may include house numbers. Residential nameplate Signs shall not exceed six (6) square feet in area.

804.8 **POLITICAL SIGNS.** Political Signs shall, with the permission of the property owner, be allowed on private property more than five (5) feet from the traveled portion of the roadway, sixty (60) days before and on the date of the election or referendum, and shall be removed within one day after said election or referendum. Political Signs are defined as Signs for candidates for election or for issues on the ballot, and such Signs shall not exceed eight (8) square feet in area per display side. Political Signs may not be illuminated.

804.9 **TEMPORARY SPECIAL EVENT/PUBLIC INTEREST SIGNS.** Signs providing notice of upcoming events or gatherings of special interest to the public, including meeting dates and locations, etc. may be displayed, but only in accordance with the following requirements:

804.91 Such Signs shall be no larger than four (4) square feet of surface area per side;

804.92 Such Signs must be located at least two (2) feet from the paved or traveled portion of the road or sidewalk along which they are placed;

804.93 Such Signs shall be placed no earlier than fifteen (15) days before the event to which they refer; and

804.94 Such Signs must be removed no later than two (2) days after the conclusion of the event to which they refer. Signs shall be limited to informational material only; no commercial advertisements or for-profit endorsements shall be permitted.

805 **Signs Allowed with Permits.** The following types of Signs shall be allowed within the Town of Montreat upon the issuance of a sign permit for each proposed Sign and subject to the regulations set forth below:

805.1 **SIGNS ALLOWED IN RESIDENTIAL ZONING DISTRICTS (R-1, R-2, AND R-3).** The following types of Signs shall be allowed in all of the residential Zoning Districts subject to the accompanying restrictions and the issuance of a sign permit:

805.11 **HOME OCCUPATION SIGNS.** Each Home Occupation shall be allowed one (1) Sign for purposes of identification. Said Sign shall not exceed four (4) square feet of surface area. Signs shall not be illuminated.

805.12 **SUBDIVISION SIGNS.** One (1) ground Sign per entrance to a subdivision. Said Sign(s) shall be no larger than sixteen (16) square feet of surface area per side. Signs shall not exceed six feet (6') in height and may not be illuminated.

805.13 **NON-RESIDENTIAL USES.** Non-residential Uses permitted as a Special Use in residential Zoning Districts shall be allowed one (1) freestanding or wall identification Sign per Street fronted on by the permitted Use. Said Sign shall be no larger than eight (8) square feet of surface area per side. Signs shall not exceed eight feet (8') in height and shall not be illuminated.

805.2 **SIGNS ALLOWED IN THE INSTITUTIONAL/RESIDENTIAL AND INSTITUTIONAL ZONING DISTRICTS.** The following types of Signs shall be allowed in the above Zoning Districts for Uses permitted in accordance with the Special Use permitting process or for a use-by-right for that Zoning District subject to the accompanying restrictions and the issuance of a sign permit:

805.21 **GROUND OR FREE-STANDING SIGNS.** For each Principal Building on a Lot, one (1) ground Sign not to exceed the following surface area limitations: Sixteen (16) square feet in surface area per side of Sign.

805.22 **WALL SIGNS.** For each Principal Building on a Lot, one (1) wall Sign located on the Street frontage side of the Building not to exceed sixteen (16) square feet. Existing or newly engraved permanent wall Signs consisting of chiseled or hewn stone which identify the current Use or occupancy of an associated Structure are permitted to serve as one (1) allowable wall Sign on the Street frontage side of the Building. Should the Use or occupancy change such that the chiseled or engraved Sign no longer serves to indicate the current Use or occupancy of the Structure, one (1) new wall Sign shall be permitted.

805.23 **MULTI-TENANT SIGNS.** Buildings occupied by two or more tenants, regardless of individual or shared ownership, are permitted to have one (1) free-standing Sign on the property on which the Building is located. The maximum size of such free-standing Signs shall not exceed sixteen (16) square feet in surface area per side of Sign. In addition, each multi-tenant Building shall be allowed one (1) wall Sign, per tenant, not to exceed eight (8) square feet of surface area. The Sign Structure(s) may be designed to allow the addition or removal of copy elements as tenants change in the case of multi-tenant Buildings.

805.24 **BUILDINGS LOCATED ON CORNER LOTS.** In cases where a Building is located on a Corner or Double-Frontage Lot, then said Building is allowed two (2) wall and two (2) freestanding Signs - one (1) of each Sign type facing each Street that borders the Lot.

805.25 **HONORARIUM SIGNS.** Honorarium signs shall be permitted if the size and scale are deemed proportionate to the Structure and location whereon displayed. Signs may be located on existing rocks, Buildings or other Structures as approved by the property owner. Signs shall be constructed of stone or bronze and securely anchored so as to prevent dislocation by weathering or impact. Signs erected above walkways or other areas of public assembly shall be subject to approval by the Building Inspector for adequate anchorage and structural support.

805.26 **EDUCATIONAL SIGNS.** Signs that supply information about people, facilities, natural features or other areas of educational or historical interest shall be permitted as educational Signs. Maximum size of such free-standing Signs shall not exceed twelve (12) square feet in surface area for pedestal mounted Structures.

806 **Temporary Signs allowed in all Zoning Districts.** In addition to the provisions of 804.9, temporary Signs, flags, or banners advertising the initial openings of businesses, establishments, special events or special sales may be permitted provided the size, location and duration of such Signs is approved by the Zoning Administrator. Such Signs may be freestanding or attached to any part of a Building, wall, or other Structure and shall meet all other applicable requirements. An example of a Sign permitted hereunder is the “Welcome” wall Sign hung by Montreat College (approximately 23’ x 7’) below the wall of the Howerton Building at the beginning of academic terms.

807 **Recreational Signs.** Sign Structures designed to identify the location of, and provide other information concerning, specific recreational features, such as hiking and walking trails and bicycle paths, through maps and trail-head informational displays, are permitted in all zoning Districts. Such Signs are to be limited to the location of the associated feature(s) and are subject to approval by the owner of the land on which the Sign and recreational feature(s) are located. Maximum size of such free-standing Signs shall not exceed twenty-four (24) square feet in surface area for multi-base frame Structures. Sign Structures are to be fabricated of naturally-durable species of wood in the form of logs and roughhewn dimensional timbers that cohere with the adjacent natural setting and location. Sign Structures may be allowed with small roof or canopy features to provide weather-protective cover for viewers, subject to approval by the Building Inspector. Roof coverings shall also be constructed of naturally durable species of wood such as cedar, redwood, black locust or black walnut.

808 **Utility Pole Banners in Town Center Overlay District.** Upon receipt of a sign permit, Owners of property located in the Institutional Use Zoning District and within the Town Center Overlay District may, in accordance with this section install temporary banners on utility poles located on their property for the purposes of (i) identifying the campus or buildings on the owner's property, or (ii) identifying special events occurring at or being celebrated on the owner's property.

808.1 The location, size and period of time the banners may be displayed and total number of banners proposed shall be approved in advance by the Zoning Administrator, in her or his reasonable discretion; and in addition, the following requirements must be met: (a) the owner of the property shall obtain the prior written consent of the owner of the utility pole to the placement of the banner thereon; (b) the maximum size of each banner shall be thirty inches (30") in width by six feet (6') in length; (c) the bottom of the banner shall be no less than eleven feet (11') above the ground surface (measured from the base of the applicable utility pole); (d) if the utility pole is within three feet (3') of the back of the curb (or if there is no curbing, within three feet (3') of the edge of the pavement) of an adjoining Street, the banner shall not be installed on the street side of the utility pole; (e) banners promoting special events shall not be permitted to be installed longer than one (1) month; and (f) any banner on a particular utility pole shall not be displayed from such pole more than eight (8) months during any calendar year.

808.2 Upon receipt of a sign permit, Owners of property located in the Institutional Use Zoning District and within the Town Center Overlay District may install banners for limited time periods on utility poles located within a Town Street Right-of-Way adjacent to the Owner's property for the purposes of identifying the campus or buildings on the Owner's property or special events occurring at or being celebrated on the owner's property, provided (i) the owner obtains the prior written consent of the Zoning Administrator upon such conditions as the Zoning Administrator may require in her or his sole discretion, including without limitation the execution of a written agreement setting forth any restrictions as to the location, size, number and permitted time periods for such banner(s), and (ii) requirements (a) through (f) provided for in the immediately preceding grammatical paragraph of this section are complied with in all respects.

809 **Wayfinding Signs.** Government agency-owned Wayfinding Signs are exempt from the provisions of this Ordinance as provided in Section 803.1 above. Privately owned Wayfinding Signs which do not exceed four (4) square feet in surface area are permitted in all Zoning Districts except R-1, R-2 and R-3, provided the location of such Signs is approved by the Zoning Administrator. Privately owned Wayfinding Signs that are part of a community Wayfinding system approved and adopted by the Town may be greater than four (4) square feet in surface area and may be in any Zoning District if and to the extent such is provided for in the ordinance adopting such community Wayfinding system. No

Wayfinding Signs other than government agency-owned Wayfinding Signs may be placed on Town Rights-of-Way or other Town property without obtaining the permission and approval of the Town, which approval or permission may be withheld or conditioned by the Town in its sole and complete discretion. As used in this ordinance, the term “Wayfinding Sign” means a Sign designed and intended to help to direct a person from point to point or confirming a person’s progress along a route.

810 **Non-Conforming Signs.** Any Sign which existed on the Effective Date, but which does not meet the requirements of the Ordinance shall be deemed a non-conforming Sign and may continue to be used, but only in accordance with the following provisions:

810.1 Maintenance of Non-Conforming Signs. All non-conforming Signs shall be maintained in accordance with the requirements of this Article, provided, however, that no repainting of the Sign shall alter the design of the Sign in any fashion. If the design or dimensions of a non-conforming Sign are altered, the non-conforming Sign shall be removed or conformed to this Article at the time of the redesign.

810.2 Replacement of Non-Conforming Signs. If a non-conforming Sign is destroyed by vandals, accident, or adverse weather conditions, such Sign may be replaced. If it is replaced, it shall conform to the requirements in this Article. Normal weathering does not constitute destruction by adverse weather conditions which would permit replacement of a non-conforming Sign. If a Sign is allowed to deteriorate, it shall not be replaced under this Section.

810.3 Relocation of Non-Conforming Signs. A non-conforming Sign may be relocated on the same premises on which it is located if the relocation brings the Sign into conformity.

810.4 Removal of Non-Conforming Signs. All non-conforming Signs must be removed or brought into compliance with this Ordinance no later than five (5) years after the date of adoption of this Ordinance.



# ARTICLE IX – LANDSCAPING

## 900 Landscaping Requirements

900.1 The intent of this section is to improve the appearance, quality and quantity of landscaped areas that are visible from public roadways and within parking lots, in accordance with the following purposes:

900.11 To assist in providing adequate light and air and in preventing overcrowding of land;

900.12 To provide visual Buffering and to enhance the beautification of the Town;

900.13 To safeguard and enhance property values and to protect public and private;

900.14 To preserve, protect and restore the unique identity and environment of the Town of Montreat;

900.15 To encourage the preservation of existing trees and vegetation;

900.16 To aid in stabilizing the environment by contributing to the process of air purification, ground water recharge, and storm water runoff retardation, while at the same time aiding in noise, glare, and heat reduction;

900.17 To conserve energy; and

900.18 To protect the public health, safety and general welfare of the Town.

900.2 **APPLICABILITY.** The requirements of this Section shall apply to all land zoned Institutional, Institutional/Residential and any proposed Planned Unit Development.

900.3 **LANDSCAPE PLAN REQUIRED.** The landscape plan as required by this Section shall accompany any request for a Building Permit from or plat approval by the Town of Montreat. No Building Permit shall be issued nor plat approved until the landscape plan is approved by the Zoning Administrator. The Zoning Administrator may request any additional information needed to determine compliance with this Section.

900.4 **GENERAL PROVISIONS.**

900.41 All plant materials used to comply with the requirements of this Section shall be native or appropriate species for this geographic area.

900.42 A temporary Certificate of Occupancy may be issued to a developer/owner if the landscaping cannot be planted at the time the Use opens or is re-established due to inappropriate timing for the growing season. A temporary Certificate of Occupancy shall specify the date that the landscaping will be planted. The Building Inspector shall have the authority to revoke the temporary Certificate of Occupancy if the landscaping is not planted by the date specified. The developer/owner shall also agree in writing that he/she or his/her successors, shall provide the required landscaping within the time period specified in the temporary Certificate of Occupancy.

900.43 Landscaping shall not obstruct the view of motorists using any Street, private driveway, parking aisles, or the approach to any Street intersection so as to constitute a traffic hazard.

900.44 All landscape planting areas shall be stabilized from dust and soil erosion immediately upon planting and shall be so maintained for the duration of the premises.

900.45 The property owner is responsible for maintaining all required plant material in good health.

900.46 The Zoning Administrator may waive the requirement to provide the new trees required by this ordinance if trees existing on the site are protected and maintained before, during and after construction in accordance with sound conservation practices. If a saved tree dies at any time, it shall be replaced with a tree (or trees) that will provide similar screening or shading.

900.47 The Zoning Administrator is authorized to waive specific landscape requirements, or portions thereof, if meeting the requirements will cause insurmountable difficulties for a development proposal.

901 **Landscape Plan Contents.** The landscape plan shall contain the following elements:

901.1 Existing and proposed landscaping;

901.2 Any screening required by Sections 504.12 and 505.10;

901.3 Existing and proposed land Uses within 200 feet of the site and the zoning of those properties;

901.4 Existing vegetation intended to be saved under the provisions of 904; and

901.5 Topographic contours at intervals of not more than five feet, indication of the direction of storm water flow, and a description of all storm water control facilities.

902 **Landscaping Required for All Sites.** No less than five percent (5%) of the Lot or parcel which is the subject of the required landscape plan shall be landscaped. This requirement may be met with both existing and new plants and trees. This requirement shall be met in addition to any area required for screening, provided that the total area of the site devoted to landscaping shall not be required to exceed forty percent (40%) of the site.

903 **Off-Street Parking and Loading Areas.** Landscaping shall be required in and around all new or redesigned off-street parking and loading areas. Landscaping shall be provided in these areas as follows:

903.1 For parking lots less than 2,500 square feet in parking area, no landscaping is required by this subsection. For parking lots greater than 2,500 square feet in size, the following overall requirements apply:

**Table 3: Landscaping Requirements for Parking Lots**

Total area of parking lot (square feet)	Percent of parking lot area (square feet) <u>that must be landscaped</u>
2,500 to 9,999	5%
10,000 to 49,999	8%
50,000 to 149,999	10%

903.2 Notwithstanding the above, an owner shall be entitled to a credit against the percent of parking lot area required to be landscaped for that portion of any rain garden or other landscape buffer area proposed to be located immediately adjacent to the perimeter of the parking area.

903.3 At least 50% of the required parking lot landscaping shall be provided as islands within the parking lot. One planting island is recommended for every 10 to 15 spaces, provided that the Zoning Administrator may authorize a reduction in the percentage of landscape area required to be provided as islands in the event the owner demonstrates the either (i) the size, configuration or other characteristics of the parking lot area make the application of the 50% requirement impractical or onerous, or (ii) the requested reduction in landscape islands and resulting increase in the perimeter landscaped area required to be provided will facilitate the owner retaining existing flora as encouraged by section 904 below or to provide rain garden or other potentially more ecologically valuable landscape areas along the perimeter of the parking area.

903.4 One tree of at least one and one half inch (1½”) caliper (measured as the diameter of the tree trunk at four and one-half feet about the ground) and an initial height of at least six feet shall be provided for each fifteen Parking Spaces. The expected height at maturity of these trees shall be at least eight feet.

903.5 No Parking Space shall be more than 75 feet from a tree or 100 feet from plantings of more than one tree, provided such tree and plantings or more than one tree may be located in landscaped areas located around the perimeter of the parking area.

903.6 Shrubs and other types of plant materials shall be used which will complement the tree plantings subject to approval by the Zoning Administrator.

904 **Existing Flora.** All developers of public and private property shall make every effort to protect and retain existing trees, shrubbery, vines, and grasses not actually lying in public roadways, drainage-ways, Building foundation sites, private driveways, paths and public walkways wherever possible. Trees are to be protected and preserved during construction in accordance with sound conservation practices. All such trees may be preserved by well islands or retaining walls wherever abutting grades are altered.

# ARTICLE X – NONCONFORMITIES

1000 **Non-Conformities.** Any Use, Structure, or Lot which lawfully existed as of November 14, 1985, the date the predecessor of this Ordinance was originally adopted, which does not meet the requirements of this Ordinance, may be continued or maintained in accordance with the following provisions. A lawful nonconformity involving a Use, Structure or Lot constructed or created in conformity with the then-applicable Town Ordinances, but subsequently made nonconforming through an amendment to the Town Ordinances, may be continued or maintained in accordance with this Article. Nonconformities associated with Signs are addressed in Section 810 of this Ordinance.

1000.1 **NON-CONFORMING LOTS – VACANT AND IMPROVED.** A Non-Conforming Vacant Lot is any legally established Lot (i) upon which no Structure is located; (ii) which does not meet the dimensional requirements for the District in which it is located and (iii) which lawfully existed as of November 14, 1985, or was created in conformity with the then-applicable Town Ordinances. A non-conforming vacant Lot may be used as a building site without regard for the dimensional requirements of the zoning District in which it is located, but the nonconforming vacant Lot shall be subject to the Setback and other requirements of such District.

A Non-Conforming Improved Lot is a Lot (a) upon which a Structure was located as of November 14, 1985, or constructed in conformity with the then-applicable Town Ordinances and (b) which does not meet the minimum dimensional and/or Setback requirements of the zoning District in which it is located. Such a Structure and Lot may continue to be used, maintained and renovated to the extent of its existing footprint, notwithstanding the dimensional and Setback requirements of this Ordinance, and such a Structure may be expanded but only in accordance with all Setback and other dimensional requirements of this Ordinance or pursuant to a Variance obtained from the Zoning Board of Adjustment.

1000.2 **NON-CONFORMING STRUCTURES** A Non-Conforming Structure is a Structure which was in existence as of November 14, 1985, or constructed in conformity with the then-applicable Town Ordinances and which does not meet the minimum requirements of the zoning District in which it is located. Such non-conforming Structure may continue to be used, maintained and renovated in accordance with Section 1000.3 of this Ordinance, notwithstanding the dimensional and Setback requirements of this Ordinance, and may be expanded but only in accordance with all Setback and other requirements of this Ordinance or pursuant to a Variance obtained from the Zoning Board of Adjustment.

1000.3 **MAINTENANCE AND REPAIR OF NON-CONFORMING STRUCTURES.** Routine maintenance, repairs, renovations and structural alterations to Non-Conforming Structures shall be permitted as follows:

- (A) Repairs, renovations and structural alterations required by law or ordered by an authorized public officer shall be permitted.
- (B) Routine maintenance, repairs, renovations and structural alterations of Non-Conforming Structures shall be permitted so long as no expansion of the non-conformity occurs as a result of the maintenance, repairs, renovations or alterations.
- (C) A Non-Conforming Structure which is damaged by fire or natural disaster may be repaired subject to the following requirements:
  - i. The square footage of the Structure shall not be increased, and the footprint of the Structure shall not be enlarged;
  - ii. The repair of the Structure must be initiated within one year of the date of the fire or natural disaster; and
  - iii. The Use of the Structure after repair shall not result in a non-conforming Use or a change from one non-conforming Use to another non-conforming Use.

1000.4 **NON-CONFORMING USES OF STRUCTURES.** A non-conforming Use of a Structure is a Use which was in existence on November 14, 1985, or which began in conformity with the then-applicable Town Ordinances, but which would not now be permitted by the Ordinance in the zoning District in which it is located. Such a non-conforming Use of a Structure may be continued subject to the following limitations:

1000.41 The non-conforming Use of a Structure shall not be changed to another non-conforming Use;

1000.42 When a non-conforming Use of a Structure has been changed to a conforming Use, it may not later be used for any non-conforming Use.

1000.43 A non-conforming Use of a Structure may be enlarged or extended only into portions of the Structure which existed at the time the Use became non-conforming. No structural alterations are allowed to any Structure containing a non-conforming Use except (i) where such alteration does not enlarge the Structure, or (ii) where such alteration is required by law or by an order of the Building Inspector or Fire Chief to ensure the safety of the Structure.

1000.44 A non-conforming Use of a Structure which is abandoned for a continuous period of one year shall not be reestablished and all subsequent Uses of the Structure must be in conformance with the applicable zoning District requirements.