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AMENDMENTS

153.150 AUTHORITY TO AMEND; PROPOSALS.

This chapter, including the Official Zoning Map of the Town, may be amended from time to time by the Board of Aldermen as herein specified, but no amendment shall become effective unless it shall have been proposed by or shall first have been submitted to the Planning Board for review and recommendation. The Planning Board shall have thirty (30) days within which to submit its report. If the Planning Board fails to submit a report within the required thirty (30) day period, it shall be deemed to have approved the proposed amendment.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

153.151 REQUIREMENT FOR CHANGE.

When the public necessity, convenience, general welfare, or good zoning practices justify such action, and after the required review and report by the Planning Board, the Board of Aldermen may undertake the necessary steps to amend the Zoning Code.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

153.152 PROCEDURE FOR AMENDMENTS.

Requests to amend the Zoning Code or Official Zoning Map shall be processed in accordance with the following requirements:

(A) Initiation of Amendments. A proposed amendment to the Zoning Code or Official Zoning Map may be initiated by the Board of Aldermen, the Planning Board, the Zoning Board of Adjustment, or by application filed with the Planning board by any citizen of the town.

(B) Application Procedure.

(1) Application forms for amendment requests by a citizen shall be obtained from the Zoning Administrator. Completed forms, plus any additional information the applicant feels to be pertinent, shall be filed with the Zoning Administrator who shall forward the information to the Planning Board. Any communication purporting to be a petition for an amendment shall be regarded as mere notice to seek relief until it is made in the required form. Only the property owner or the holder of a conditional sales contract may request an amendment to the Zoning Code for a particular piece of property.

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(2) Petitions for amendments must be submitted in proper form, at least two weeks prior to the Planning Board meeting in order to be heard at that meeting. A petition fee, as set forth in § 153.998, shall accompany each petition and this fee shall be nonrefundable except in any case where the petition is withdrawn prior to its consideration by the Planning Board.

(3) Petitions for changes in zoning classification shall show the location and intended use of the site and the names of all property owners and existing land uses within 200 feet of the property lines.

(C) Meeting of the Planning Board. All papers and other data submitted by the applicant on behalf of the amendment request shall be transmitted to the Planning Board.

(1) The Planning board, at regular meetings, shall review and prepare a report, including its recommendation, for transmittal to the Board of Aldermen.

(2) All meetings of the Planning Board shall be open to the public. At a meeting, any party may appear in person, or by agent, or by attorney.

(3) No member shall be excused from voting except upon matters involving the consideration of his own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the Council chamber, 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 the compensation and allowances of members of the Board is not a matter involving a member's own financial interest or official conduct.

(4) Following action of the Planning Board, all papers and data pertinent to the application shall be transmitted to the board of Aldermen for final action.

(D) Before enacting an amendment to this chapter, the Board of Aldermen shall hold a public hearing thereon. At least ten days notice of time and place of the hearing shall be published in a newspaper of general circulation in town for two consecutive weeks. Public hearings shall be held during the regularly scheduled meeting of the Board of Aldermen.

(E) Changes in the Zoning Map. Following final action by the Board of Aldermen, any necessary changes in the Zoning Map shall be made. A written record of the type and date of the changes shall be maintained by the Zoning Administrator. Until the change is made, no action by the Board of Aldermen on map amendments to the Zoning code shall be considered official, unless the Zoning Administrator fails to make the change within seven days after formal action by the Board of Aldermen. In the latter

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event, action by the Board of Aldermen shall be considered official seven days after the date even if the Zoning Administrator has failed to make the appropriate changes.
(Ord., passed 12-13-82; Am. Ord., passed 7-11-83; Am. Ord., 0-99-09, passed 6-14-99)

153.153 RECONSIDERATION OF PROPOSED AMENDMENTS.

Reconsideration of Proposed Amendments. The Board of Aldermen shall not reconsider a proposed amendment to the Zoning Map if the amendment requests a change to the same zoning classification for the same lot, parcel, or portion, for a period of one year from the date of final determination of the prior request unless the Planning Board recommends to the Board of Aldermen that the reconsideration be given after the Planning Board has found either: there has been a substantial change of character of the area; or, evidence of factors or conditions exist which were not considered by the Planning Board or the Board of Aldermen in previous deliberations which might substantially alter the basis upon which the previous determination was reached.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

ZONING BOARD OF ADJUSTMENT

153.160 ESTABLISHMENT; APPOINTMENT OF MEMBERS; TERMS.

The Zoning Board of Adjustment that is in office at the time of enactment of this chapter shall remain as such. Present members shall serve the remainder of their respective terms. Members of the Zoning Board of Adjustment, and alternate members as hereinafter provided for, shall be full-time residents within the corporate limits of Black Mountain or full-time residents within areas subject to an annexation ordinance adopted by the Board of Aldermen for the Town, and shall be appointed by the Board of Aldermen of the Town. Members from areas of annexation shall serve until the expiration of their terms, or until the date the annexation procedure is voided or otherwise terminated. In addition to five regular members, the Board of Aldermen shall appoint three alternate members who shall each serve three year terms. Any vacancy in the membership shall be filled by the alternate member with the most seniority, who shall serve the remainder of the unexpired term. The Board of Aldermen shall then appoint a person to fill the vacancy created by the removal of the alternate. In the event that two or three vacancies should occur simultaneously, the alternate members shall fill the unexpired terms and the Board of Aldermen shall appoint persons to fill the vacancies created by the removal of the alternate members. Alternate members, while serving in the capacity of a regular member, shall have and may exercise all of the powers and duties of a regular member. Initial appointment of the five (5) regular members of the Board of Adjustment shall be as follows: one member for a term of one year, two members for a term of two years, and two members for a term of three years. Upon expiration of the original terms of office, each succeeding term shall be for three years and until the successor members qualify for office. Appointments shall be limited to two consecutive three year terms and any member who has served two consecutive

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three year terms may not be reappointed until he/she has been off the Board of Adjustment for at least one full year. Vacancies on the commission shall be filled for the unexpired term by the Board of Aldermen. All appointments to fill the balance of unexpired terms shall become effective upon the appointee having taken the oath of office. If a member of the Board of Adjustment has served more than two-thirds of a full term after being appointed to complete the term of a previous board member, his service during the completion of that term shall be considered a full term for purposes of determining his eligibility to serve successive subsequent terms. The Board of Aldermen may dismiss any member who misses three consecutive meetings or one-half of the meetings held in a single six month period without good cause (such as temporary severe illness of member or family member, or overriding but temporary business concerns.) Such dismissal may be considered upon report or complaint by the Board of Adjustment chairperson, a member of the Board of Adjustment, or on the Board of Aldermen's own motion. A concurring vote of four-fifths of the members of the Board shall be necessary to reverse any order, requirement, decision or determination of an administrative official charged with the enforcement of an ordinance adopted pursuant to this part, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of this ordinance.

(Am. Ord. 0-03-02, passed 6-9-03)

(A) To bring the terms of members of the Zoning Board of Adjustment into uniformity with the terms of members of other boards and commissions, the Board of Aldermen shall, at the regular August meeting in 2000, modify the terms of the following named Board of Adjustment members as follows. The positions presently held by Teresa Tatham, Cynthia Weaver, and Jack Ellison shall be extended to July, 2001. The positions presently held by Violet Miller and Natalie Brem and the alternate position held by John Kornya shall be extended to July, 2002. The alternate position held by Donald S. Collins shall be extended to July, 2003. The term of the vacant alternate position, when filled, shall expire July, 2003.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83; Am. Ord., O-89-3, passed 3-13-89; Am. Ord., O-90-8, passed 7-9-90; Am. Ord., O-96-03A, passed 3-11-96; Am. Ord. 0-00-11, passed 8-14-00)

153.161 PROCEEDINGS OF THE ZONING BOARD OF ADJUSTMENT.

The Zoning Board of Adjustment shall elect a chairman and vice-chairman from its members who shall serve for one year or until reelected or until their successors are elected. The board shall appoint a secretary. The board shall adopt bylaws and rules in accordance with the provision of this chapter and of Article 19, G. S. Chapter 160A. Meetings of the Board shall be held at call of the Chairman and at other such times as the Board may determine. The Chairman, or in his absence the Vice Chairman, may administer oaths. All meetings of the board shall be open to the public.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

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153.162 POWERS AND DUTIES OF THE ZONING BOARD OF ADJUSTMENT.

The Zoning Board of Adjustment shall have the following powers and duties:

(A) Administrative Review. To hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by the Zoning Administrator in the enforcement of this chapter.

(B) Variance. To authorize upon appeal in specific cases the variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the chapter will, in an individual case result in practical difficulty or unnecessary hardship, so that the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done. The existence of a nonconforming use of neighboring land, building, or structures in the same district or of permitted or nonconforming use in other districts shall not constitute a reason for the requested variance. The variance may be granted in the individual case of unnecessary hardship upon a finding by the Board of Adjustment that the following conditions exist:

(1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography that are not applicable to other lands or structures in the same district.

(2) Granting the requested variance will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.

(3) A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

(4) The requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare.

(5) The special circumstances are not the result of the actions of the applicant.

(6) The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.

(7) The variance is not a request to permit a use of land, building or structure which is not permitted in the district involved.

(8) Without the requested variance, the applicant may make no

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reasonable use of the property.

(C) Conditional Use Permits. (See also Section 153.090 through 153.097.) It shall be the duty of the board of Adjustment to hear requests for conditional use permits and grant the permits in accordance with the guidelines set forth by this chapter.

(D) Appeals.

(1) Appeals to the Zoning Board of Adjustment concerning interpretation or administration of this chapter may be taken by any person aggrieved or by an officer, department or board of the town. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board, after notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board or by a court of record on application, on notice to the Zoning Administrator and on due cause shown.

(2) In exercising the above powers, the Zoning Board of Adjustment may, in conformity with the provisions of this act, reverse or affirm wholly or in part, or may modify the order, requirements, decision, or determination and to that end, shall have all of the powers of the Zoning Administrator and may issue or direct the issuance of a permit.

153.163 APPLICATION PROCEDURE.

(A) Persons wishing to seek a variance, request an administrative review, or to take an appeal shall file an application with the Board of Adjustment 30 days prior to the meeting at which it is to be reviewed. An application fee, as set forth in § 153.998, 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 Board of Adjustment.

(B) The Zoning Board of Adjustment shall hold a public hearing regarding any application. At least ten days notice of the time and the place of the hearing shall be published in a newspaper of general circulation in the town weekly for two consecutive weeks. If the application is for a variance, written notification shall be made to all property owners within 200 feet of the property lines.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83; Am. Ord., 0-99-09, passed 6/14/99)

153.164 DECISIONS OF ZONING BOARD OF ADJUSTMENT.

The concurring vote of four members of the Board of Adjustment shall be necessary to reverse any order requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation of this chapter. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact; and shall keep records of its

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examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be public record. On all appeals, applications and matters brought before the Zoning Board of Adjustment, the Board shall inform, in writing, the applicant of its decisions. The Board must also inform, in writing, all persons who specifically request a copy of the decision.
(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

153.165 APPEALS FROM DECISIONS OF THE ZONING BOARD OF ADJUSTMENT

Any person who may have a substantial interest in any decision of the Zoning Board of Adjustment may appeal any decision of the board to the Superior Court in and for the county by filing with the Clerk of the Court a petition in writing setting forth plainly, fully and distinctly wherein the decision is contrary to law. The appeal shall be filed within 30 days after the decision of the Board is rendered.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

ADMINISTRATION AND ENFORCEMENT

153.180 ZONING ADMINISTRATOR.

(A) In accordance with G. S. 160A, as amended, and for the purposes of administering and enforcing this chapter the position of Zoning Administrator is assigned the duty and authority to administer and enforce the provisions of this chapter.

(B) If the Zoning Administrator shall find that any provisions of this chapter are being violated, the person or persons responsible for such violations shall be notified in writing indicating the nature of the violation and the action necessary to correct it. The Zoning Administrator shall order discontinuance of uses of land, buildings in violation of this chapter, removal of illegal buildings or structures or discontinuance of illegal work being done; or shall take any other action authorized by this chapter to insure compliance with or to prevent violation of its provisions.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

153.181 BUILDING AND SIGN PERMIT REQUIRED.

No building, sign or other structure shall be erected, moved, added to or structurally altered without a permit issued by the Zoning Administrator. No building or sign permit shall be issued by the Zoning Administrator except in conformity with the provisions of this chapter unless a variance is received from the Board of Adjustment as provided by this chapter.

(A) The Zoning Administrator shall issue sign permits in accordance with the provisions of this chapter. Unlawful signs shall be made to comply with all regulations or shall be removed in accordance with the appropriate provisions set forth in the Zoning

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Code. Conformity of proposed construction with the Zoning Code will be determined prior to the issuance of a building permit.

(B) In the area annexed by the town after December 1, 1987, compliance with the town Zoning Code will be waived if one or both of the following conditions are met:

(1) Building permits are obtained prior to the effective date of annexation.

(2) A written request for a single, 120-day extension is received by the Building and Zoning Inspector prior to the effective date of annexation, and that appropriate building permits are obtained prior to the 121st day following the effective date of annexation.

(3) In projects where phased development and the issuance of more than one building permit is planned, compliance is waived for a period not to exceed four years if the requirements of divisions (B)(1) and (2) above are complied with and the scope of the entire planned project are presented to the Building and Zoning Administrator of the town at the time of application for the initial building permit. Subsequent building permits shall be issued as needed if other application requirements are met and the general character of the development remains the same. However, if during phased development construction is discontinued for a period greater than 12 months, division (B) shall no longer apply and any additional development must comply with the Zoning of the town.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83; Am. Ord. O-88-4, passed 5-9-88) Penalty, see section 153.999

153.182 APPLICATION FOR BUILDING PERMIT.

All applications for building permits shall be accompanied by a site plan or a plot plan drawn to scale showing:

- (A) The actual dimensions and shape of the lot to be built upon.
- (B) Exact sizes, location, and dimensions of the proposed building or alteration.
- (C) Location of the lot with respect to adjacent rights-of-way.
- (D) Location and dimensions of off-street parking and means of ingress and egress to such space.

(E) Any other information as may be lawfully required by the Zoning Administrator, including location of existing and proposed uses of buildings and land; number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing in conformance with and provided for the enforcement

(Amended 6/99, Reprinted 4/00)
(Reprinted 10/00; 1/02, 2/03, 3/04, 10/07)

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of this chapter. The site plan shall be retained by the Zoning Administrator.
(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

153.183 PERMITS ISSUED FOR APPROVED LOTS ONLY.

The building permit shall not be issued for construction on new lots which are created by the subdivision of land unless the subdivision has been approved by the Planning board. The subdivision plat must be recorded with the Register of Deeds for the County and copies of the plat sent to the Zoning Administrator before any building permit is issued.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

153.184 CERTIFICATE OF ZONING COMPLIANCE.

It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a Certificate of Zoning Compliance shall have been issued by the Zoning Administrator stating that the proposed use of the building or land conforms to the requirements of this chapter.

(A) No permit for erection, alteration, moving, or repair of any building shall be issued until an application has been made for a Certificate of Zoning Compliance, and the certificate shall be issued in conformity with the provisions of this chapter upon completion of the work.

(B) A temporary Certificate of Zoning Compliance may be issued by the Zoning Administrator for a period not to exceed six months during alterations or partial occupancy of a building pending its completion, provided that such temporary certificate may include such conditions and safeguards as will protect the safety of the occupants and the public.

(C) The Zoning Administrator shall maintain a record of all Certificates of Zoning Compliance, and a copy shall be furnished upon request to any person.

(D) Failure to obtain a Certificate of Zoning Compliance shall be a violation of this chapter and punishable under Section 153.999.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

153.185 PERMIT FOR TEMPORARY USES.

The Zoning Administrator is authorized to issue a permit for temporary use as follows:

(A) Carnivals or circus for a period not to exceed 21 days, subject to the approval of the Board of Aldermen.

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(B) Religious meetings in a tent or other temporary structures for a period not to exceed 60 days.

(C) Open lot sale of Christmas trees, in the Industrial or Commercial districts for a period not to exceed 60 days.

(D) Satellite real estate sales office representing sales of land on which the use is located, in any district, for a period not to exceed one year.

(E) Contractor's office and equipment shed, in any district, for a period covering construction phase of the project not to exceed one year, provided that the office be placed on the property to which it is appurtenant.

(F) All permits for temporary uses may be renewed provided that it is determined that said use is clearly of a temporary nature, will cause no traffic congestion, and will not create a nuisance to surrounding uses.
(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

153.186 EXPIRATION OF BUILDING PERMIT.

If the work described in any building permit has not begun within 90 days from the date of issuance, the permit shall expire; it shall be cancelled by the Zoning Administrator, and written notice shall be given to the persons affected. Upon the beginning of a project, work must be diligently continued until completion with noticeable progress being made every 60 days. If such continuance of work is not shown, said permit will expire.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

153.187 EFFECT UPON OUTSTANDING BUILDING PERMITS.

Nothing herein contained shall require any change in the plans, construction, size or designated use of any building structure of part thereof for which a building permit has been issued before the time of passage of this chapter.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

153.188 APPEAL FROM DECISION OF ZONING ADMINISTRATOR.

It is the intention of this chapter that all questions arising in connection with the enforcement of the chapter shall be presented first to the Zoning Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from the decision of the Zoning Administrator.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

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153.189 COMPLAINTS REGARDING VIOLATIONS; INVESTIGATIONS.

Whenever a violation of this chapter occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint, stating fully the causes, shall be filed with the Zoning Administrator. He shall record properly such complaint, immediately investigate, and take action as provided by this chapter.
(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

153.190 REMEDIES.

In a case in which any building or structure is proposed to be or is erected, constructed, reconstructed, altered, maintained, or used; or any land is proposed to be in violation of this chapter, the town in mandamus, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use. This action shall be taken by the Town Attorney at the direction of the Board of Aldermen.
(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

153.191 PRE-EXISTING SUITS AT LAW OR IN EQUITY; PROSECUTION.

All suits at law or in equity and all prosecutions resulting from the violations of any zoning ordinance heretofore in effect which are pending in any of the courts of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this chapter, but shall be prosecuted to their finality as if this chapter had not been adopted; any and all violations of existing zoning ordinances, which have been prefiled, shall be prosecuted to their finality.
(Ord., passed 12-13-82; Am. Ord., passed 7-11-83)

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HISTORIC PRESERVATION COMMISSION

153.200 Purpose

The historical heritage of our Town is one of our most valued and important assets. The conservation of and preservation of historic districts and landmarks stabilize and increase property values in their areas and strengthen the overall economy of the Town. The purpose of establishing local conservation districts, historic districts and landmarks is to encourage the restoration, preservation, rehabilitation and conservation of historically, architecturally, and archaeologically significant areas, structures, buildings, sites, objects and their surroundings, and to review new construction design to ensure compatibility with the character of the district and to safeguard against any potentially adverse influences which may cause the decline, decay, or total destruction of these important assets. In addition, the preservation of historic districts and landmarks provides for the education, pleasure and enrichment of the residents of Black Mountain and the State as a whole.

153.201 Historic District, Conservation District and Landmark Establishment

Historic districts, Conservation districts and landmarks are established through the application of an overlay district which are zoning districts that are applied only in conjunction with other zoning districts, and may grant additional use or development requirements upon the underlying zoning controlling the use and development of a lot to ensure the compatibility and appropriateness of exterior design within the historic district or for the landmark.

Overlay districts can be applied to any zoning districts and the boundaries of such overlay shall be shown on the official zoning map of the Town of Black Mountain. (i.e. 'HD' overlay also referred to as 'Historic District') An overlay district can be initiated as an amendment by Board of Aldermen, Planning Board, Historic Preservation Commission, or a property owner.

153.202 Designation of Historic Districts

The Board of Aldermen may adopt, amend, reject, or repeal ordinances designating historic districts when adoption or amendment is pursuant to the following procedure:

- (1) An investigation and report describing the historical, architectural, or archaeological significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and the description of the boundaries of such district has been prepared, and
- (2) The North Carolina Department of Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, shall make an

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analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the Board of Aldermen within thirty (30) calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the Town of any responsibility for awaiting such analysis, and the Board of Aldermen may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

- (3) Historic districts shall consist of areas, which are deemed to be of special significance in terms of their history, prehistory, architecture and/or culture, and to possess integrity of design, setting, materials, feeling, and association. The area, buildings, structures, sites, or objects shall be significant elements of cultural, social, economic, political, or architectural history of the Town or of the archaeological history or prehistory of the Town. The conservation of such a district will provide for the education, pleasure and enhancement of the quality of life of all residents of the Town.
- (4) The Board of Aldermen shall designate the boundaries of an historic district in accordance with the procedures set forth in Sections 153.150 through 153.153, Amendments of the Black Mountain Zoning Ordinance and North Carolina General Statute 160A-384.
- (5) Following the Board of Aldermen designation and approval of an historic district, the area so designated shall be labeled 'HD' on the official zoning map.
- (6) With respect to any changes in the boundaries of such district subsequent to its initial establishment or the creation of additional districts within the Town, the investigative studies and reports shall be prepared by the Historic Preservation Commission and shall be referred to the Planning Board for its review and comment. Changes in the boundaries of an initial district or proposals for additional districts shall also be submitted to the Department of Cultural Resources in accordance with the provisions as stated in 153.202 (2) above.

153.203 Designation of Conservation District

The Board of Aldermen may adopt, amend, reject, or repeal ordinances designating conservation districts when adoption or amendment is pursuant to the following procedure:

- (1) The Board of Aldermen shall designate the boundaries of a conservation district in accordance with the procedures set forth in Sections 153.150 through 153.153, Amendments of the Black Mountain Zoning Ordinance and North Carolina General Statute 160A-384.

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- (2) Following the Board of Aldermen designation and approval of a conservation district, the area so designated shall be labeled 'CD' on the official zoning map.

153.204 Designation of Landmarks

The Board of Aldermen may adopt, amend, reject, or repeal ordinances designating historic landmarks that meet the following criteria, when those ordinances contain the following elements and when adoption or amendment is pursuant to the following procedure:

(a) Criteria for designation:

No building, structure, site, area, or object shall be recommended for designation as an historic landmark unless it is deemed and found by the Historic Preservation Commission to be of special significance in terms of its historical, prehistorical, architectural, archaeological, and for cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

(b) Elements of ordinances designating historic landmarks:

Ordinances designating historic landmarks shall contain the following elements, which shall:

- (1) Describe each property designated in the ordinance, including the approximate area of the property so designated.
- (2) List the name or names of the owner or owners of the property.
- (3) Describe those elements of the property that are integral to its historical, prehistorical, architectural, archaeological and/or cultural significance.
- (4) Describe the nature of the commission's jurisdiction over the interior, if any, and those interior features of the property to be reviewed for certificates of appropriateness if they are to be changed.
- (5) Require, for each building, structure, site, area, or object designated as an historic landmark that the waiting period set forth in the general statutes be observed prior to its demolition.
- (6) Recite any other information the Board of Aldermen deems necessary within the authority conferred by the General Statutes.

(c) Procedure for adopting or amending historic landmark ordinances:

(Amended 6/99, Reprinted 4/00)
(Reprinted 10/00; 1/02, 2/03, 3/04, 10/07)

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Ordinances designating historic landmarks shall be adopted and amended according to the following procedure:

- (1) The Historic Preservation Commission shall make, or cause to be made, an investigation and report on the historical, prehistorical, architectural, archaeological and/or cultural significance of each building, structure, site, area, or object proposed for designation. Applications prepared by owners will be judged by the same criteria as those prepared by the Commission. Such reports shall contain the following information:
 - a. The name of the property to be considered for designation-both common and historic names, if they can be determined.
 - b. The name and address of the current property owner.
 - c. The location of the property proposed to be designated historic, including the street address and tax map and parcel numbers.
 - d. The date of construction and of any later alterations, if any.
 - e. An assessment of the significance of the site or structure pursuant to Section 153.204(a).
 - f. An architectural or archaeological description of the area of the site or structure proposed to be designated. If outbuildings or other appurtenant features are proposed to be designated, the report shall contain a description of those features.
 - g. An historical discussion of the site or structure within its type, period, and locality.
 - h. Black and white photographs and color slides that clearly depict the property proposed to be designated, including views of all facades, pertinent details and siting.
 - i. A map showing the location of the property, including any outbuildings and appurtenant features.
 - j. A clear description of the boundaries.
- (2) The commission shall forward its recommendation to the Board of Aldermen. The Commission shall refer the report to the State Department of Cultural Resources, Division of Archives and History.

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- (3) The Department of Cultural Resources, acting through the State historic preservation officer or his or her designee, may make an analysis of and recommendations concerning the report. If the department does not submit its written comments or recommendations in connection with any proposed designation within thirty (30) calendar days after a written request for such analysis has been received by the department, the Commission and the Board of Aldermen shall be relieved of any responsibility to consider such comments.
- (4) The Historic Preservation Commission and the Board of Aldermen shall each hold a public hearing on the proposed ordinance. Notice of the hearings shall be published at least once in a newspaper generally circulated within the Town. Written notice of the hearings shall be mailed by the Preservation Commission to all owners of property proposed for landmark status and the owners of all properties that abut the proposed landmark property whose identity and current mailing address can be ascertained by the exercise of reasonable diligence. All such notices shall be published or mailed not less than ten (10) nor more than twenty-five (25) days prior to the date set for the public hearing. The mailed notices in this subsection are for the convenience of property owners and occupants and any defect or their omission therein shall not impair the validity of the public hearing or any action following therefrom.
- (5) Following the public hearings, the Board of Aldermen may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.
- (6) Upon adoption of the ordinance or any amendments thereto, the owners and occupants of each designated historic property shall be given written notification of such designation insofar as reasonable diligence permits. One (1) copy of the ordinance and each amendment thereto shall be filed by the Historic Preservation Commission in the office of the County Register of Deeds. Each historic property designated as an historic landmark in the ordinance shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the Register of Deeds office, and the Historic Preservation Commission shall pay a reasonable fee for filing and indexing. A second copy of the ordinance and of each amendment thereto shall be kept on file in the Town Clerk's office and shall be made available for public inspection at any reasonable time. A third copy of the ordinance and each amendment thereto shall be given to the County Building Inspector.

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- (7) Upon adoption of the ordinance or any amendments thereto, it shall be the duty of the Historic Preservation Commission to give notice thereof to the County tax assessor. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the assessor in appraising it for tax purposes. The fact that a building, structure, site, area, or object has been designated an historic landmark shall be clearly indicated on all tax maps maintained by the County for such period as the designation remains in effect.

153.205 Jurisdiction of Historic Preservation Commission

There is hereby established a commission, which shall be known as the Black Mountain Historic Preservation Commission and is further described in Title III, Section 30.70 through Section 30.72 of the Black Mountain Code of Ordinances. Its jurisdiction shall include the Town of Black Mountain and any extraterritorial jurisdiction area of the Town as shown on the official zoning map and atlas of the town.

153.206 Rules of procedure, design guidelines and meetings

The historic preservation commission shall develop and adopt rules of procedure, which shall govern the conduct of its business in accordance with the provisions of this ordinance. Such rules of procedure shall also include as an appendix 'The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings' and the 'Historic District Design Guidelines' including photographs, illustrations, descriptions and other similar material interpreting the criteria for determining appropriateness. The design guidelines shall be placed on file in the Black Mountain town offices and made available to the general public during the regular town office business hours.

The Historic Preservation Commission may review and propose changes to the Design Guidelines and forward any such recommendations for changes to the Board of Aldermen for their approval.

Specific provisions shall be made in the commission's rules of procedure for commission meetings following the filing of a proposal on which the commission is required to pass. Such specific provisions shall be made in order that a proposal be brought before the commission:

- (a) Within a reasonable time;
- (b) In a manner which is conducive to commission consideration; and
- (c) In a manner which will facilitate commission action.

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The commission shall meet at regularly scheduled times and at such other times as the commission may determine or at the call of its chairman as provided for in its rules of procedure.

153.207 Powers and duties.

The powers of the Historic Preservation Commission shall be to:

- (1) Receive applications for certificates of appropriateness as required under section 153.209. The commission shall review such application according to the criteria to determine appropriateness, provided in section 153.210, along with the design guidelines and the guidelines of the secretary of the interior, and shall approve or disapprove such application as provided in section 153.213, paragraph (6).
- (2) Recommend to the Board of Aldermen districts or areas to be designated by ordinance as historic overlay districts, conservation districts, and recommend individual structures, buildings, sites, areas, or objects to be designated by ordinance as an historic landmark.
- (3) Recommend to the Board of Aldermen that designation of any area as an historic overlay district or part thereof be revoked or removed for cause and recommend that designation of individual structures, buildings, sites, areas, or objects as historic landmarks be revoked for cause.

The Black Mountain Historic Preservation Commission shall exercise such other powers and perform such other duties or activities as are required elsewhere by the Ordinance Creating the Historic Preservation Commission, the Black Mountain Zoning Ordinance or the General Statutes of North Carolina or as assigned by the Black Mountain Board of Aldermen.

153.208 Certificates of appropriateness required

From and after the designation of a landmark or an historic district, no exterior portion of any building or other structure (including masonry, walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished on a landmark, or within the historic district, until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the Historic Preservation Commission. Such a certificate is required to be issued by the Commission prior to the issuance of a building permit or other permit granted for the purpose of constructing, altering, moving or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this ordinance. A certificate of appropriateness shall be required whether or not a building or other permit

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is required. Any such zoning permits or such other permits not issued in conformity with this section shall be invalid.

For purposes of this ordinance, “exterior features” shall include the architectural style, general design and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures. Exterior features may also include historic signs, color and significant landscape, archaeological and natural features of the area. In the case of outdoor advertising signs, exterior features shall be construed to mean the style, material, size and location of all such signs.

The State of North Carolina (including its agencies, political subdivisions and instrumentalities), the Town of Black Mountain and all public utility companies shall be required to obtain a certificate of appropriateness for landmarks and in the historic district prior to initiating any changes in the character of street paving, sidewalks, utility installations, lighting, walls, fences, structures and buildings on property, easements or streets owned or franchised by the State of North Carolina, the Town of Black Mountain or public utility companies or for construction, alteration, moving or demolition within the historic district or of designated landmarks.

Examples of specific items which fall under ordinary maintenance or repair that will not require a certificate of appropriateness are:

- (a) Underground utilities, except where archaeological finds or sites are uncovered;
- (b) Extension or upgrading of service to customers for equipment such as meters, valves and cleanouts;
- (c) Changes in type or amount of mechanical equipment such as interfaces, transformers or traffic-control devices on existing overhead lines, poles or ground-mounted installations;
- (d) Deletion or replacement of poles of standard material and height, not to exceed thirty-seven (37) feet;
- (e) Addition or deletion of fire hydrants;
- (f) Routine replacement of street signs;
- (g) Any upgrading of facilities to comply with National Electrical Safety Code (NESC) requirements;
- (h) Addition of equipment on existing lines or poles;

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- (i) Replacement of existing overhead lines, poles or ground-mounted installation.

153.209 Application for Certificate of Appropriateness

Applications for a certificate of appropriateness shall be obtained from, and when completed, filed with the Planning Director or his or her designee. The application shall be filed two (2) weeks prior to the next regularly scheduled meeting of the Commission. Sketches, drawings, photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, additions, changes or new construction shall accompany each application. The names and mailing addresses of property owners filing and/or subject to the application, and the addresses of property within one hundred (100) feet on all sides of the property, which is subject to the application, must also be filed. No application which does not include the aforementioned information will be accepted.

It shall be the policy of the Commission, in regard to applications involving new construction or extensive alterations and/or additions to existing structures, that an applicant may request a meeting with staff and an individual Commission member prior to going to the full Historic Commission in order to advise them informally at an early state in the development process concerning the Commission's guidelines, the nature of the area where the proposed project will take place, and other relevant factors. The staff members and individual Commission member, collectively and individually, shall refrain from any indication of approval or disapproval. Advice or opinions given by any staff member or Commission member at such an informal meeting shall not be considered official or binding upon the Commission.

153.210 Criteria to determine appropriateness

No certificate of appropriateness shall be granted unless the Commission finds that the application complies with the principles and guidelines adopted by the Commission for review of changes. It is the intent of these regulations to insure, insofar as possible, that construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district or of landmarks shall be congruous with the special character of the district or landmark.

The following review criteria, in addition to the principles and design guidelines and the guidelines of the secretary of the interior, shall be considered, where relevant, to make findings of fact indicating the extent to which the application for a certificate of appropriateness is or is not congruous with the historic aspects of the designated landmark or district:

- (a) Lot coverage, defined as the percentage of the lot area covered by primary structures.

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- (b) Setback, defined as the distance from the lot lines to the building.
- (c) Building height.
- (d) Spacing of buildings, defined as the distance between adjacent buildings.
- (e) Proportion, shape, positioning, locating, pattern, sizes and style of all elements of fenestration and entry doors.
- (f) Surface materials and textures.
- (g) Roof shapes, forms and materials
- (h) Use of regional or local architectural traditions.
- (i) General form and proportion of buildings and structures; and the relationship of additions to the main structure.
- (j) Expression of architectural detailing.
- (k) Orientation of the building to the street.
- (l) Scale, determined by the size of the units of construction and architectural details in relation to the human scale, and also by the relationship of the building mass to adjoining open space and nearby buildings and structures; maintenance of pedestrian scale.
- (m) Proportion of width to height of the total building façade.
- (n) Archaeological sites and resources associated with standing structures.
- (o) Effect of trees and other landscape elements.
- (p) Major landscaping which would impact known archaeological sites.
- (q) Style, material, size and location of all outdoor advertising signs.
- (r) Appurtenant features and fixtures, such as lighting
- (s) Structural condition and soundness
- (t) Walls – physical ingredients, such as brick, stone or wood walls, wrought iron fences, evergreen landscape masses or combinations of these.
- (u) Ground cover or paving

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- (v) Significant landscape, archaeological and natural features

The Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" shall be the sole principles and guidelines used in reviewing applications of the State of North Carolina for Certificate of Appropriateness.

The commission shall adopt principles and guidelines interpreting these criteria for new construction, alterations, additions, moving and demolition of landmarks or properties in the historic district.

153.211 Demolition

- (1) An application for a certificate of appropriateness authorizing the relocation, demolition, removal or destruction of a designated landmark or a building, structure or site within historic district may not be denied except as provided in Section 152.211 (3) below. However, the effective date of such a certificate may be delayed for a period of up to three hundred sixty-five (365) days from the date of approval. The Commission shall reduce the period of delay if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay. During such period the commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the Commission finds that a building, structure or site has no special significance or value toward maintaining the character of a district, it shall waive all or part of such period of delay and authorize earlier demolition or removal.

If the commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the Board of Aldermen, the demolition or destruction of any building, site or structure located on the property of the proposed landmark or in the proposed district may be delayed by the Commission for a period of up to one hundred eighty (180) days or until the Board of Aldermen takes final action on the designation, whichever comes first.

- (2) The Board of Aldermen may enact an ordinance to prevent the demolition by neglect of any designated landmark or any structure or building within the established historic district. Such ordinance shall provide appropriate safeguards to protect property owners from undue hardship.
- (3) An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

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153.212 Land use, interior arrangement, maintenance, emergency repairs not considered.

- (1) Nothing herein shall be construed to prevent a property owner from making any use of his or her property not prohibited by other statutes, ordinances or regulations.
- (2) The commission may enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the commission may enter any private building or structure without express consent of the owner or occupant thereof.
- (3) Except as provided in paragraph (4) below, the commission shall have no jurisdiction over interior arrangement and shall take no action except to prevent the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant features, outdoor advertising signs, or other significant features which would be incongruous with the special character of a landmark or of the district.
- (4) Notwithstanding paragraph (3) above, the jurisdiction of the commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned designated landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of any owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the register of deeds and indexed accordingly to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the commission's jurisdiction over the interior.
- (5) The ordinary maintenance or repair of any exterior architectural feature of a landmark, or in the historic district (HD) which does not involve a change in design, material, or outer appearance thereof, shall not be prevented by the requirements pertaining to the designated landmark or historic district.
- (6) Nothing in this article shall be construed to prevent (a) the maintenance or (b) in the event of an emergency, the immediate restoration of any existing above-ground utility structure without approval by the commission or the ordinary repair of streets, sidewalks, pavement markings, street signs, or traffic signs.
- (7) The construction, reconstruction, alteration, restoration, moving or demolition of any exterior architectural features, which the Town building inspector or similar official shall certify is required for public safety because of an unsafe or dangerous condition, shall not be prevented by the requirements pertaining to the landmark, or the historic district.

153.213 Hearing procedures

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- (1) The historic preservation commission shall receive applications for certificates of appropriateness as required under section 153.209. The commission shall review such application according to the review criteria, the design guidelines and the Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings and shall approve or disapprove such application as provided in paragraph (6) of this section.
- (2) Prior to issuance or denial of a certificate of appropriateness, the commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application and shall give the applicant and such owners an opportunity to be heard. A written notice of the proposal shall be sent to the applicant and to owners of property (i.e., lots, parcels or tracts of land) within one hundred (100) feet of the property for which an application for a certificate of appropriateness has been applied for.
- (3) Applications for certificates of appropriateness shall be acted upon within ninety (90) days after filing, otherwise the application shall be deemed approved and a certificate shall be issued.
- (4) Prior to the issuance or denial of a certificate of appropriateness that applicant and other property owners likely to be materially affected by the application shall be given an opportunity to be heard. All meetings of the Commission shall be open to the public in accordance with the North Carolina Open Meetings Law, General Statute 143, Article 33 C.
- (5) In cases where the commission deems it necessary, it may hold a public hearing concerning an application for a certificate of appropriateness.
- (6) The historic preservation commission's final action on an application for a certificate of appropriateness shall be by the passage of a motion to take one (1) of the following actions:
 - (a) Approve the application for a certificate of appropriateness as proposed;
 - (b) Approve the application for a certificate of appropriateness subject to specific conditions and/or modifications of the proposal presented in the application for a certificate of appropriateness;
 - (c) Disapprove the application for a certificate of appropriateness as proposed or modified.
- (7) An appeal of the commission's action in granting or denying any certificate may be taken to the zoning board of adjustment (a) by any aggrieved party, (b) shall be taken within times prescribed by the historic preservation commission by general rule, and (c) shall be in the nature of certiorari.

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- (8) Written notice of the intent to appeal to the Board of Adjustment from the Historic Commission must be sent to the Historic Commission postmarked within thirty (30) days following the decision. The Superior court of Buncombe County shall hear appeals of decisions of the Board of Adjustment. In the case of properties owned by the State of North Carolina or its agencies, appeals may be taken to the North Carolina Historical Commission which shall render its decision within thirty (30) days from the date of appeal by the State is received by the Historical Commission. The decision of the N.C. Historical Commission shall be final and binding upon both the State and the Commission.

153.214 Major and minor works

- (1) Major Works – Major work projects involve a change in the appearance of a building or landscape, and are more substantial in nature than minor work projects.
- (2) Minor Works - A certificate of appropriateness application, when determined to involve a minor work, may be reviewed and approved by the minor works committee or in some cases by staff as outlined in the Design Guidelines. The minor works committee consists of the historic preservation commission chairman and vice-chairman and the planning director or his or her designee.

Minor works are defined as those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the landmark or property in the historic district.

An application may receive a certificate of appropriateness from staff or the committee if it falls under the list of minor works provided in the Historic Preservation Commission Rules of Procedure or the Design Guidelines. If the staff or committee does not issue a certificate of appropriateness, the applicant will be advised to make a formal application to the historic preservation commission. No application may be denied without formal action by the historic preservation commission. All minor works applications approved by the planning director or his/her designee shall be forwarded to the Commission for their information in time for its next scheduled meeting.

153.215 Certificate issuance; expiration; enforcement

- (1) Passage of a motion to approve, with or without modification, an application shall constitute the issuance of a certificate of appropriateness by the historic preservation commission. The application and the duly approved minutes of the commission shall constitute the written documentation of such issuance. Following the meeting a certificate shall be mailed to the property for which a certificate has been issued. The certificate shall be posted on the premises, in a location visible from the street, while the work is in progress. Minutes of a historic preservation commission meeting shall be approved before the end of the next meeting.

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- (2) A certificate of appropriateness shall be valid for a period of six (6) months from the date of issuance for the purpose of obtaining a zoning permit or other permit for constructing or altering structures. A certificate of appropriateness shall expire six (6) months after the date of issuance if the work authorized by the certificate has not been commenced. If after commencement the work is discontinued for a period of six (6) months, the permit shall immediately expire.
- (3) Compliance with certificates of appropriateness shall be enforced by the Planning Director or his or her designee. Failure to comply with a certificate of appropriateness shall be a violation of the zoning ordinance and is punishable according to established procedures and penalties for such violations. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.
- (4) In case any building, structure, site, area or object designated as a landmark or located within the historic district is about to be demolished whether as a result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the ordinance, the commission or other party aggrieved by such action may institute any appropriate action or proceeding to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such a building or structure.

153.216 Conditions for certain approvals.

- (1) In the event that the commission, in considering an application for a certificate of appropriateness, shall find that a building or structure for which a zoning permit is requested is to be an authentic restoration or reconstruction of a building or structure which existed at the same location but does not meet zoning requirements, said building or structure may be authorized to be restored or reconstructed at the same location where the original building or structure was located, provided the zoning board of adjustment authorizes such as a special exception and no use other than that permitted in the district in which such is located is made of said property. Such conditions as may be attached to the historic preservation commission approval and those conditions as may be set by the zoning board of adjustment shall be included in any certificate of appropriateness related thereto.
- (2) If the commission finds that an application for a certificate of appropriateness concerning any porches, steps, posts, fences, walls or other items extending over, on or within public rights-of-way to be necessary for the authentic restoration, reconstruction or maintenance thereof, and will not impede or block pedestrian traffic or constitute a hazard to public safety, such findings shall be transmitted to Board of Aldermen for its consideration in authorizing or denying such encroachments into rights-of-way.

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If the Board of Aldermen authorizes such encroachment, any items restored, reconstructed or maintained on, over or within a public right-of-way shall be the responsibility of the owner, and the owner shall agree to protect and hold the Town of Black Mountain blameless against any and all liability, cost damage or expense suffered as a result of the restoration, reconstruction or maintenance thereof. The lowest point of any such item projecting over any sidewalk shall be at least nine (9) feet above the sidewalk immediately below.

153.217 Conservation District Review required

From and after the designation of a downtown conservation district, no project involving a major work (as defined in the “Black Mountain Historic District Design Guidelines”) shall be erected, altered, restored, moved or demolished within the downtown conservation district, until after an application for a certificate of appropriateness has been submitted to and reviewed by the Historic Preservation Commission. Such a certificate is required to be issued by the Commission prior to the issuance of a building permit or other permit granted for the purpose of constructing, altering, moving or demolishing structures.

The Conservation District review procedure is established as an education program and as a means to further the goals of the Town’s historic preservation efforts. The purpose of the review procedure is to advise and educate rather than to regulate. The review process in this section is mandatory, however compliance with the recommendations contained in the review is voluntary.

Applications for a conservation district review shall be obtained from, and when completed, filed with the Planning Director or his or her designee. The application shall be filed two (2) weeks prior to the next regularly scheduled meeting of the Commission. Sketches, drawings, photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, additions, changes or new construction shall accompany each application.

Projects shall be reviewed and certificates of appropriateness shall be issued consistent with the principles and guidelines adopted by the Commission for review of changes. It is the intent of these regulations to insure, insofar as possible, that construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, or appurtenant fixtures shall be congruous with the special character of the district.

Applications for a conservation district review shall be reviewed and a certificate of appropriateness issued within thirty (30) days from the date that the application is received by the Town.

(Ord. 0-04-01, passed 3-08-04)

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153.998 FEES.

Except where otherwise defined in this Chapter, the following fees shall be paid for the indicated request or application. Fees shall be paid to the Zoning Administrator and made payable to the Town of Black Mountain.

<u>APPLICATION/REQUEST</u>	<u>FEE</u>
Zoning Code or Map Amendment	\$300
Conditional Use Permit	\$300
Variance	\$300
TND Filing Fee (includes rezoning fee)	\$500

(Ord. O-99-09, passed 06-14-99)

153.999 PENALTY.

(A) Any person violating any provision of this chapter shall be cited by the Zoning Administrator by a written citation giving notice of the nature of the violation and the necessary remedial action to be taken. The citation shall be served upon the offending party or responsible property owner or party in interest personally by the Zoning Administrator or by certified mail, return receipt requested, restricted delivery. The citation shall provide for a time period in which such remedial action shall be taken with the time period not to exceed 90 days.

(B) Upon failure of the offending party or responsible property owner or party in interest to comply with the required action set forth in the citation issued by the Zoning Administrator, the party shall be subject to criminal prosecution and shall, upon conviction of violation of this chapter, be guilty of a misdemeanor and shall be fined up to \$500.00 by the Court for each offense. Each day the violation continues after the time set out in the Zoning Administrator's citation for remedial action to be taken shall constitute a separate offense.

(C) The court or courts having jurisdiction over the subject matter and the parties in any prosecution for failure to comply with this chapter may, in addition to levying the fines provided for in this section, enjoin the offending party or responsible property owner from further actions which would be in violation of this chapter and issue orders requiring the parties to take the action necessary to remedy any violation of this chapter.

(D) No court conviction where fines are imposed but no injunctions or orders to take remedial action are issued by the court shall prevent the town from taking other lawful action as is necessary to prevent or remedy any violation.

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(E) The Zoning Administrator is specifically authorized to withhold or terminate building permits, privilege licenses or other permits issued by his office from any offended party until the time that the party has taken appropriate action to comply with this chapter. Such building permits, privileges, licenses or permits may be, but need not be, those which have been requested or issued in connection with the particular project or property which is in violation of this chapter.

(Ord., passed 12-13-82; Am. Ord., passed 7-11-83; Am. Ord. O-85-6, passed 10-7-85, Am. Ord. 0-02-11, passed 10-14-02)

Statutory reference:

Enforcement of ordinances, see G.S. Section 160A-175

End of Section 153.