

Article III Administrative Mechanisms

Part I Planning Commission

Section 21. Appointment and Terms of Planning Commission Members

[a] Number of Members: There shall be a Planning Commission consisting of thirteen (13) members.

[b] Number of Town Members: Number of ETJ Members: Eight (8) members of the Planning Commission shall reside within the Town. Five (5) members shall reside within the Town's extraterritorial planning area (hereafter "ETJ"). Should the Town's ETJ be expanded or the ratio of the population of the ETJ relative to the population of the Town increase or decrease, in accordance with N. C. Gen. Stat. §160A-362 and as specified herein, the Town will adjust the number of members from the ETJ in order to maintain proportional representation based on population for residents of the ETJ. There shall be at all times at least one representative of the ETJ on the Planning Commission. To the extent a qualified person can be found, one of the Town members shall be a resident of Boone and a full-time student of Appalachian State University.

[c] Adjustment of Ratio of Town and ETJ Members: Within six months of the publication of the decennial census information for the Town of Boone and Watauga County, conducted by the United States Census Bureau, the Administrator shall inform the Town Council of any change in the ratio of Town population to ETJ population which requires a modification in the number of Town and ETJ members. Thereafter, as positions open by resignation, removal for cause or absence, or expiration of term, the number of members shall be adjusted through the appointment process to achieve the required balance between Town and ETJ members. An ETJ position shall be created or the number of ETJ positions reduced on the Planning Commission when the population of the entire ETJ constitutes a full fraction of the Town's population divided by the total membership of the Planning Commission or when the population of the ETJ falls below a full fraction of the Town's population divided by the total membership of the Planning Commission, respectively.

[d] Appointment of Members to the Planning Commission: All Town members of the Planning Commission shall be appointed by the Town Council following the procedures of Section 35.01 of the Municipal Code. When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the resulting increased population requires that a new ETJ member be appointed, the Town

Council shall adopt a resolution requesting that the Watauga County Board of Commissions appoint a qualified person to serve as a member. Prior to adopting the resolution, when it pertains to positions created by vacancy due to the expiration of a term or resignation of a member, the Town Council may itself solicit applications for the position, and it may transmit its two top choices for each position to the Board of Commissioners. If the Board of Commissioners is unwilling to appoint either of the two applicants submitted by the Town Council, it may appoint a person of its own choosing. However, before appointing a new person to the Planning Commission, the Watauga County Board of Commissioners must hold a public hearing on the selection. Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The Watauga County Board of Commissioners shall select appointees only from those who apply at or before the public hearing and are otherwise qualified. A qualified person is one who lives in the ETJ, who expresses a willingness to familiarize him- or herself with the Town's UDO, Comprehensive Plan and all other duly adopted plans and ordinances relating to the regulation of development within the Town planning jurisdiction, and who expresses a willingness to serve on the Planning Commission. The Commissioners shall make the appointment within forty-five days following the public hearing. If the Watauga County Board of Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ.

[e] Planning Commission members shall generally be appointed for four (4) year staggered terms, but members may continue to serve until their successors have been appointed. The Appalachian State University student member shall serve a term of one (1) year. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur only for the unexpired remainder of the term.

[f] Members may be appointed to no more than three successive terms. A former member may be reappointed following a one-year period of non-membership.

[g] Unless the Town Council takes specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal, a Planning Commission member shall be automatically removed for failure to attend three (3) consecutive regularly scheduled meetings or quarterly public hearings or for failure to attend fifty percent (50%) of the meetings within any twelve month period of the member's appointed service. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Commission. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are

due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Town Council may propose removal of a member for other good cause related to the performance of Commission duties or the member's eligibility to serve, but before removal on that basis, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

[h] If a resident member moves outside the Town or if an ETJ member moves outside the ETJ, that shall constitute a resignation from the Planning Commission, effective upon the date a replacement is appointed by the Council.

[i] A member of the Planning Commission may resign by notifying the Mayor, Town Manager, or Administrator.

Section 22. Meetings of the Planning Commission

[a] The Planning Commission shall establish a regular meeting no less than quarterly, or more often as it shall determine or require, and at the request of the Council, Town Manager, or Administrator.

[b] Since the Commission has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Articles IV, V, and VI. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

[c] The Planning Commission shall operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, "the law"). At a minimum, all meetings of the Planning Commission or any subcommittee, advisory group, or working group of the Commission, by whatever name or designation (hereafter referred to as a "subcommittee") shall require all of the following:

- [1] Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin board for that purpose in Town Hall, unless a longer notice is required by this ordinance or State law. If an agenda has been distributed to members of the Commission, it shall also be posted. An "official meeting" occurs whenever a regularly scheduled meeting of the Planning Commission or subcommittee occurs, whether or not a quorum is present, or when a majority of the Planning Commission or subcommittee meet, whether in person or by electronic means such as conference

call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business. "Deliberate" includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision. An "emergency meeting" is one that concerns generally unexpected circumstances which require the immediate consideration of the Planning Commission or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.

- [2] A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.
- [3] Full and accurate minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Commission or subcommittee.

[d] In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Planning Commission, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question.

[e] The agenda shall include only those matters within the responsibilities and powers of the Planning Commission as provided herein.

[f] The business of the Planning Commission or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Planning Commission or subcommittee shall be respectful to each other and shall avoid interrupting each other.

[g] Minutes of the Planning Commission or subcommittee shall be subject to revision and adoption by the group as a whole.

[h] Meetings of the Planning Commission or subcommittee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.

[i] At any meeting of the Planning Commission or subcommittee, if the meeting is opened for public comment, any person wishing to address the body or subcommittee shall state his or her name and whether or not he or she is a resident of the town or ETJ.

- [1] If there is a signup sheet provided, speakers shall be recognized in the order in which they have signed up.
- [2] Unless a different time limit is adopted by the Planning Commission or subcommittee, no member of the public shall be allowed to speak for more than five minutes.
- [3] Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Planning Commission or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.
- [4] All persons addressing the Planning Commission or subcommittee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

Section 23. Quorum and Voting

[a] A quorum shall consist of seven (7) members.

[b] All actions or recommendations of the Planning Commission or subcommittee shall require the presence of a quorum and are only effective or adopted upon majority vote of the members present, following a motion and second. In the case of a divided vote on any question on which the Commission is required to act, the record shall include the vote of each member. When such action is to be reported to the Council, the committee, task force, or advisory body shall not only report the action or recommendation adopted, but the vote by which it was adopted. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Commission, and the members of the Commission can hear the member.

[c] A roll call vote shall be taken upon the request of any member.

[d] ETJ members may vote on all matters considered by the Commission, regardless of the location of the property affected.

Section 24. Planning Commission Officers

[a] Unless the Town Council designates the Chair and Vice-Chair of the Planning Commission, it shall retain the power to choose its own Chair and Vice-Chair. The Planning Commission shall designate the Chair and Vice-Chair of any subcommittees. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms only.

[b] The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

Section 25. Powers and Duties of Planning Commission

[a] The Planning Commission may:

- [1] Make studies of the area within its jurisdiction and surrounding areas;
- [2] Determine objectives to be sought in the development of the study area;
- [3] Prepare and adopt plans for achieving these objectives;
- [4] Develop and recommend to the Council policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner. The Planning Commission shall not, however, have the power to “initiate” changes to this ordinance, as the term “initiate” is used in Article XXI, Section 379.
- [5] Advise the Council concerning the use and amendment of means for carrying out plans;
- [6] Make findings and recommendations to the Council concerning proposed zoning text and map amendments, as provided for and in compliance with Section 382.
- [7] Review and either approve or deny proposed minor subdivision requests when a portion of the land to be subdivided lies within a Designated Water Supply Watershed District, based upon application of Articles IV and XIII of this ordinance.
- [8] Perform any other related duties that the Council may direct.

[b] Limitations on Powers of the Planning Commission

- [1] No individual member of the Planning Commission shall purport to speak or act on behalf of the Commission without action by the Commission explicitly authorizing the member to speak or act on its behalf.
- [2] No individual member of the Planning Commission, nor the Planning Commission itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Commission to speak or act on its behalf.
- [3] Without an express grant of authority or explicit authorization by the Council, no individual member of the Planning Commission, nor the Commission itself, may direct staff members of the Town to take action requiring the expenditure of Town funds.
- [4] The Planning Commission may not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Planning Commission on tasks assigned by the Town Council or it's designee.
- [5] The Planning Commission may create subcommittees or working groups within it's membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

Section 26. Advisory Committees

[a] From time to time the Council may appoint one or more individuals to help the Planning Commission carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the Council may appoint advisory committees to consider the thoroughfare plan, bikeway plans, community appearance plans, housing plans, economic development plans, etc. Such advisory committees shall be created and operate, unless otherwise designated by the Council, according to the procedures established under Municipal Code §§ 30.51, and 35.01, *et seq.*

[b] Members of such advisory committees shall sit as nonvoting members of the Planning Commission when such issues are being considered, and they shall be invited to lend their talents, energies, and expertise to the Planning Commission. However, all formal recommendations of the Planning Commission to the Council shall be made by the Planning Commission itself.

As with Commission members, unless the Council takes specific action to excuse the absences and reappoints an advisory committee member after being informed by the Administrator of the member's removal, an advisory committee member shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the meetings within any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the committee. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for any other good cause related to the performance of committee duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

[c] Nothing in this section shall prevent the Council from establishing independent advisory groups, committees, or commissions to make recommendations on any issue directly to the Council.

Section 27. Reserved

Section 28. Reserved

Part II Community Appearance Commission

Section 29. Appointment and Terms of Community Appearance Commission Members

[a] There shall be a Community Appearance Commission consisting of seven (7) members. All members shall reside within the planning jurisdiction of the town and shall be appointed by the Council. To the extent qualified persons can be found, the majority of members shall have special training or experience in a design field such as architecture, landscape design, horticulture, city planning, or a closely related field.

[b] Community Appearance Commission members shall be appointed for three (3) year staggered terms, but members may continue to serve until their successors have been appointed. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur for the unexpired remainder of the term.

[c] Members may be appointed to no more than three successive terms. A former member may be reappointed following a one-year period of non-membership.

[d] Unless the Council takes specific action to excuse the absences and reappoints a member after being informed by the Administrator of the member's removal, a Community Appearance Commission member shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the meetings within any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Commission. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence would trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for any other good cause related to the performance of Commission duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

[e] A member of the Community Appearance Commission may resign by notifying the Mayor, Town Manager, or Administrator.

Section 30. Meetings of the Community Appearance Commission

[a] The Community Appearance Commission shall establish a regular meeting schedule and shall meet at least quarterly, or more often as it shall determine or require, and at the request of the Council, Town Manager, or Administrator.

[b] Since the Commission has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Articles IV, V, and VI. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

[c] The Community Appearance Commission shall operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, “the law”). At a minimum, all meetings of the Community Appearance Commission or any subcommittee, advisory group, or working group, by whatever name or designation (hereafter referred to as a “subcommittee”) shall require all of the following:

- [1] Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin board for that purpose in Town Hall. If an agenda has been distributed to members of the Community Appearance Commission or subcommittee, it shall also be posted. An “official meeting” occurs whenever a regularly scheduled meeting of the Community Appearance Commission or subcommittee occurs, whether or not a quorum is present, or when a majority of the Community Appearance Commission meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business. “Deliberate” includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision. An “emergency meeting” is one that concerns generally unexpected circumstances which require the immediate consideration of the Community Appearance Commission or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.
- [2] A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.
- [3] Full and accurate minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Community Appearance Commission or subcommittee.

[d] In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Community Appearance Commission, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question.

[e] The agenda shall include only those matters within the responsibilities and powers of the Community Appearance Commission as provided herein.

[f] The business of the Community Appearance Commission or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Community Appearance Commission or subcommittee shall be respectful to each other and shall avoid interrupting each other.

[g] Minutes of the Community Appearance Commission or subcommittee shall be subject to revision and adoption by the group as a whole.

[h] Meetings of the Community Appearance Commission or subcommittee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.

[i] At any meeting of the Community Appearance Commission or subcommittee, if the meeting is opened for public comment, any person wishing to address the Commission or subcommittee shall state his or her name and whether or not he or she is a resident of the town or ETJ.

- [1] If there is a signup sheet provided, speakers shall be recognized in the order in which they have signed up.
- [2] Unless a different time limit is adopted by the Commission or subcommittee, no member of the public shall be allowed to speak for more than five minutes.
- [3] Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Commission or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.
- [4] All persons addressing the Commission or subcommittee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period

substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

Section 31. Quorum and Voting

[a] A quorum shall consist of four (4) members.

[b] All actions or recommendations of the Community Appearance Commission or subcommittee shall require the presence of a quorum and are only effective or adopted upon majority vote of the members present, following a motion and second. In the case of a divided vote on any question on which the Commission is required to act, the record shall include the vote of each member. When such action is to be reported to the Council or Planning Commission, the Community Appearance Commission shall not only report the action or recommendation adopted, but the vote by which it was adopted. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Commission, and the members of the Commission can hear the member.

[c] A roll call vote shall be taken upon the request of any member.

Section 32. Community Appearance Commission Officers

[a] Unless the Town Council designates the Chair and Vice-Chair of the Community Appearance Commission, it shall retain the power to choose its own Chair and Vice-Chair. The Community Appearance Commission shall designate the Chair and Vice-Chair of any subcommittees. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms only.

[b] The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

Section 33. Powers and Duties of the Community Appearance Commission

[a] The Community Appearance Commission may:

- [1] Make studies and recommend to the Council plans, goals, and objectives relating to the visual appearance, community beautification, landscape development, and redevelopment of the town's planning area.
- [2] Develop and recommend to the Council policies, ordinances, administrative procedures, and other means for carrying out plans for community beautification in a coordinated and efficient manner. The Community Appearance Commission shall not, however, have the power to “initiate” changes to this ordinance, as the term “initiate” is used in Article XXI, Section 379.
- [3] Respond to requests made by the Administrator for recommendations concerning the suitability of site landscaping for proposed special use permits.
- [4] Upon request of the Administrator, review and approve or reject requests for approval of alternative means to address the Commercial Development Appearance Standards of Article XXII, in accordance with Section 399, as well as when such approval is a condition adopted by the Board of Adjustment in connection with the issuance of a special use permit or one adopted by the Council in a conditional zoning determination.
- [5] Perform any other duty assigned by the Council which is authorized pursuant to N.C. Gen. Stat. § 160A-452.

[b] Limitations on Powers of the Community Appearance Commission

- [1] No individual member of the Commission shall purport to speak or act on behalf of the Commission without action by the Commission explicitly authorizing the member to speak or act on its behalf.
- [2] No individual member of the Commission, nor the Commission itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Commission to speak or act on its behalf.
- [3] Without an express grant of authority or explicit authorization by the Council, no individual member of the Commission, nor the Commission itself, may direct staff members of the Town to take action requiring the expenditure of Town funds.
- [4] The Community Appearance Commission may not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate

the Town Council will appoint a group(s) to advise the Community Appearance Commission on tasks assigned by the Town Council or its designee.

- [5] The Community Appearance Commission may create subcommittees or working groups within its membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

Part III Historic Preservation Commission

Section 34. Organization of Historic Preservation Commission

[a] Appointment and Terms of Historic Preservation Members

- [1] There shall be a Historic Preservation Commission consisting of seven members, all appointed by the Town Council. All members must be residents of the Town's planning jurisdiction, with no fewer than five members residents of the Town and up to two members residents of the Town's extraterritorial planning area (hereafter "ETJ"). Two Town Council members shall serve on the Commission. At least four (4) of the members of the Commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields, and to the extent persons may be found with the stated qualifications, the Town Council shall seek to appoint two persons with significant experience or knowledge in historic preservation, one person with significant experience or knowledge in building construction, and one person with significant experience or knowledge in architecture. The required special interest, experience or education for four members, and the specialized experience or knowledge to meet these goals may be held by a Town Council member or any other member of the Commission.
- [2] Other than Town Council Members, Historic Preservation Commission members shall be appointed for three (3) year staggered terms, but members may continue to serve until their successors have been appointed. Town Council members shall be appointed for one (1) year terms. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur only for the unexpired remainder of the term. Except for Town Council members who may serve as many terms as appointed, members may be appointed to no more than two successive terms, but a former member may be reappointed following a one-year period of non-membership.
- [3] Unless the Town Council takes specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal, an Historic Preservation Commission member shall be automatically removed for failure to attend three (3) consecutive regularly scheduled meetings or for failure to attend fifty percent (50%) of the meetings within any twelve month period of the member's appointed service. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted

in the calculations toward automatic removal from the Commission. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Town Council may propose removal of a member for other good cause related to the performance of Commission duties, but before removal on that basis, the member shall be given an opportunity to appear before Town Council to address the issues involved.

- [4] If a resident member moves outside the town of if an ETJ member moves outside the planning jurisdiction that shall constitute a resignation from the Historic Preservation Commission, effective upon the date a replacement is appointed by the Council.
- [5] A member of the Historic Preservation Commission may resign by notifying the Mayor, Town Manager, or Administrator.

[b] Meetings of the Historic Preservation Commission

- [1] The Historic Preservation Commission shall establish a regular meeting schedule, no less than quarterly, or more often as it shall determine or require, and at the request of the Council, Town Manager, or Administrator.
- [2] The Commission shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas. When exercising authority over any individual property in accordance with Article XXIII, Sections 404(a) and 407 of this Ordinance, it shall conduct itself in a quasi-judicial manner. At all times it shall conduct its meetings in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, "the law"). At a minimum, all meetings of the Historic Preservation Commission or any subcommittee, advisory group, or working group of the Commission, by whatever name or designation (hereafter referred to as a "subcommittee") shall require all of the following:
 - [A] Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin board for that purpose in Town Hall, unless a longer notice is required by

this ordinance or State law. If an agenda has been distributed to members of the Commission, it shall also be posted. An “official meeting” occurs whenever a regularly scheduled meeting of the Historic Preservation Commission or subcommittee occurs, whether or not a quorum is present, or when a majority of the Historic Preservation Commission or subcommittee meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business. “Deliberate” includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision. An “emergency meeting” is one that concerns generally unexpected circumstances which require the immediate consideration of the Historic Preservation Commission or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.

- [B] A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.
 - [C] Full and accurate minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Commission or subcommittee.
- [3] In the absence of the chair, the vice-chair shall conduct any meeting of the Historic Preservation Commission, and in the absence of both officers, the Mayor may designate a person to act as chair for the meeting in question.
 - [4] The agenda shall include only those matters within the responsibilities and powers of the Historic Preservation Commission as provided herein.
 - [5] The business of the Historic Preservation Commission or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the chair, and members of the Historic Preservation Commission or subcommittee shall be respectful to each other and shall avoid interrupting each other.
 - [6] Minutes of the Historic Preservation Commission or subcommittee shall be subject to revision and adoption by the group as a whole.

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- [7] Meetings of the Historic Preservation Commission or subcommittee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.
- [8] At any meeting of the Historic Preservation Commission or subcommittee, if the meeting is opened for public comment, any person wishing to address the body or subcommittee shall state his or her name and whether or not he or she is a resident of the town or ETJ.
- [A] If there is a signup sheet provided, speakers shall be recognized in the order in which they have signed up.
- [B] Unless a different time limit is adopted by the Historic Preservation Commission or subcommittee, no member of the public shall be allowed to speak for more than five minutes.
- [C] Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Historic Preservation Commission or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.
- [D] All persons addressing the Historic Preservation Commission or subcommittee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

[c] Quorum and Voting

- [1] A quorum shall consist of four (4) members.
- [2] All actions or recommendations of the Historic Preservation Commission or subcommittee shall require the presence of a quorum and are only effective or adopted upon majority vote of the members present, following a motion and second. In the case of a divided vote on any question on which the Commission is required to act, the record shall include the vote of each member. When such action is to be reported to the Town Council, the committee, task force, or advisory body shall not only report the action or recommendation adopted, but the vote by which it was adopted. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Commission, and the members of the Commission can hear the member.
- [3] A roll call vote shall be taken upon the request of any member.
- [4] All members may vote on all matters considered by the Commission, regardless of the location of the property.

[d] Historic Preservation Commission Officers

- [1] Unless the Town Council designates the Chair and Vice-Chair of the Historic Preservation Commission, it shall retain the power to choose its own Chair and Vice-Chair. The Historic Preservation Commission shall designate the Chair and Vice-Chair of any subcommittees. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms only.
- [2] The Chair and Vice-chair may take part in all deliberations and vote on all issues.

Section 35. Powers and Duties of Historic Preservation Commission

[a] The Historic Preservation Commission shall, in accordance with the procedures of Article XXIII of this Ordinance, have the following powers:

- [1] Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;

- [2] Recommend to the Town Council areas to be designated by ordinance as "Historic Districts;" modification of Historic District boundaries; and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks."
- [3] Recommend to the Town Council criteria and procedures for the protection and preservation of Historic Districts and Landmarks;
- [4] Recommend to the Town Council that designation of any area as an Historic District or part thereof, or designation of any building, structure, site, area, or object as a Landmark, be revoked or removed for cause;
- [5] Conduct educational programs with respect to historic properties and districts within its jurisdiction, including but not limited to programs of recognition for significant historic properties, and programs to educate property owners of possible tax benefits associated with historic designation;
- [6] Cooperate with the State, federal, and local governments in pursuance of the preservation and protection of areas and properties deemed to be of special significance in terms of their history, prehistory, architecture and /or culture, and contract, when authorized by the Town Council, with the State of North Carolina or the United States of America, or any agency of either for that purpose;
- [7] Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof, provided that no member, employee or agent of the Commission may enter any private building or structure without the express consent of the owner or occupant thereof;
- [8] Prepare and recommend the official adoption of a preservation element as part of the municipality's comprehensive plan;
- [9] Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, and identify and propose preservation alternatives to owners; and
- [10] Perform any other related duties that the Council may direct.

[b] Limitations on Powers of the Historic Preservation Commission

- [1] No individual member of the Historic Preservation Commission shall purport to speak or act on behalf of the Commission without action by the Commission explicitly authorizing the member to speak or act on its behalf.
- [2] No individual member of the Historic Preservation Commission, nor the Historic Preservation Commission itself, shall purport to speak or act on behalf of the Town without action by the Town Council explicitly authorizing the member or empowering or authorizing the Commission to speak or act on its behalf.
- [3] Without an express grant of authority or explicit authorization by the Town Council, no individual member of the Historic Preservation Commission, nor the Commission itself, may direct staff members of the Town to take action requiring the expenditure of Town funds.
- [4] The Historic Preservation Commission may not create committees, subcommittees, advisory groups or working groups, by whatever name denominated, without the explicit approval of the Town Council.

Part IV Tree Board

Section 36. Appointment and Terms of Tree Board Members

[a] There shall be a Tree Board consisting of five members. All members shall reside within the planning jurisdiction of the town. To the extent qualified persons can be found, the members shall have special training or experience in arboriculture, horticulture, architecture, or landscape design.

[b] Tree Board members shall be appointed for two [2] year staggered terms, but members may continue to serve until their successors have been appointed. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur for the unexpired remainder of the term.

[c] Members may be appointed to no more than three successive terms. A former member may be reappointed following a one-year period of non-membership.

[d] Unless the Council takes specific action to excuse the absences and reappoints a member after being informed by the Administrator of the member's removal, a Tree Board member shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the meetings within any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence would trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for any other good cause related to the performance of Board duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

[e] A member of the Tree Board may resign by notifying the Mayor, Town Manager, or Administrator.

Section 37. Meetings of the Tree Board

[a] The Tree Board shall meet as it deems necessary or desirable, no less than quarterly (in order to meet the requirements of Tree City USA) and more often as it shall determine or require, and at the request of the Council, Town Manager, or Administrator.

[b] Since the Board has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Articles IV, V, and VI. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

[c] The Tree Board shall operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, “the law”). At a minimum, all meetings of the Tree Board or any subcommittee, advisory group, or working group, by whatever name or designation (hereafter referred to as a “subcommittee”) shall require all of the following:

- [1] Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin board for that purpose in Town Hall. If an agenda has been distributed to members of the Tree Board or subcommittee, it shall also be posted. An “official meeting” occurs whenever a regularly scheduled meeting of the Tree Board or subcommittee occurs, whether or not a quorum is present, or when a majority of the Tree Board meets, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business. “Deliberate” includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision. An “emergency meeting” is one that concerns generally unexpected circumstances which require the immediate consideration of the Tree Board or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.
- [2] A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.
- [3] Full and accurate minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Tree Board or subcommittee.

[d] In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Tree Board, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question.

[e] The agenda shall include only those matters within the responsibilities and powers of the Tree Board, as provided herein.

[f] The business of the Tree Board or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Tree Board or subcommittee shall be respectful to each other and shall avoid interrupting each other.

[g] Minutes of the Tree Board or subcommittee shall be subject to revision and adoption by the group as a whole.

[h] Meetings of the Tree Board or subcommittee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.

[i] At any meeting of the Tree Board or subcommittee, if the meeting is opened for public comment, any person wishing to address the body or subcommittee shall state his or her name and whether or not he or she is a resident of the town or ETJ.

- [1] If there is a signup sheet provided, speakers shall be recognized in the order in which they have signed up.
- [2] Unless a different time limit is adopted by the Tree Board or subcommittee, no member of the public shall be allowed to speak for more than five minutes.
- [3] Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Tree Board or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.
- [4] All persons addressing the Tree Board or subcommittee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with

norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

Section 38. Quorum and Voting

[a] A quorum shall consist of three (3) members.

[b] All actions or recommendations of the Tree Board or subcommittee shall require the presence of a quorum and are only effective or adopted upon majority vote of the members present, following a motion and second. In the case of a divided vote on any question on which the Tree Board is required to act, the record shall include the vote of each member. When such action is to be reported to the Council, Community Appearance Commission or Planning Commission, the Tree Board shall not only report the action or recommendation adopted, but the vote by which it was adopted. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Board, and the members of the Board can hear the member.

[c] A roll call vote shall be taken upon the request of any member.

Section 39. Tree Board Officers

[a] Unless the Town Council designates the Chair and Vice-Chair of the Tree Board, it shall retain the power to choose its own Chair and Vice-Chair. The Tree Board shall designate the Chair and Vice-Chair of any subcommittees. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for re-appointment. Vacancies in these offices shall be filled for the unexpired terms only. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for re-appointment. Vacancies in these offices may be filled for the unexpired terms by the Council.

[b] The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

Section 40. Powers and Duties of the Tree Board

[a] The Tree Board may:

- [1] Make studies and recommend to the Council plans, goals, and objectives relating to the urban forest of the town.
- [2] Develop and recommend to the Council policies, ordinances, administrative procedures, plans and other means for maintaining the town's urban forest program. The Tree Board, shall not,

however, have the power to “initiate” changes to this ordinance, as the term “initiate” is used in Article XXI, Section 379.

- [3] Develop public education programs which inform the public on matters concerning the betterment of trees and related resources.
- [4] Coordinate and/or conduct special projects for the betterment of the urban forest.

[b] Limitations on Powers of the Tree Board

- [1] No individual member of the Board shall purport to speak or act on behalf of the Board without action by the Board explicitly authorizing the member to speak or act on its behalf.
- [2] No individual member of the Board, nor the Board itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Board to speak or act on its behalf.
- [3] Without an express grant of authority or explicit authorization by the Council, no individual member of the Board, nor the Board itself, may direct staff members of the Town to take action requiring the expenditure of Town funds.
- [4] The Tree Board may not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Tree Board on tasks assigned by the Town Council or it’s designee.
- [5] The Tree Board may create subcommittees or working groups within it’s membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

Section 41. Reserved

Section 42. Reserved

Part V Board of Adjustment

Section 43. Appointment and Terms of the Board of Adjustment

[a] Number of Members: There shall be a Board of Adjustment consisting of eight (8) regular members and eight (8) alternates. Alternates shall serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Each alternate, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

[b] Number of Town Members; Number of ETJ Members: Five (5) regular members of the Board of Adjustment and five (5) alternates shall reside within the Town (hereafter, "resident members"). Three (3) regular members and three (3) alternates shall reside within the Town's ETJ. Should the Town's ETJ be expanded or the ratio of the population of the ETJ relative to the population of the Town increase or decrease, in accordance with N. C. Gen. Stat. §160A-362 and as specified herein, the Town will adjust the number of members from the ETJ in order to maintain proportional representation based on population for residents of the ETJ relative to the Town. However, the resident members may never number fewer than five (5) regular members and five (5) alternates, so if necessary to maintain proportionality, the full size of the board shall be increased. There shall be at all times at least one representative of the ETJ on the Board of Adjustment.

[c] Adjustment of Ratio of Town and ETJ Members: Within six months of the publication of the decennial census information for the Town of Boone and Watauga County, conducted by the United States Census Bureau, the Administrator shall inform the Town Council of any change in the ratio of Town population to ETJ population which requires a modification in the number of Town and ETJ members. Thereafter, as positions open by resignation, removal for cause or absence, or expiration of term, the number of members shall be adjusted through the appointment process to achieve the required balance between Town and ETJ members. An ETJ position shall be created or the number of ETJ positions reduced on the Board of Adjustment when the population of the entire ETJ constitutes a full fraction of the Town's population divided by the total membership of the Board of Adjustment or when the population of the ETJ falls below a full fraction of the Town's population divided by the total membership of the Board of Adjustment, respectively.

[d] Appointment of Members to the Board of Adjustment: All Town members of the Board of Adjustment shall be appointed by the Town Council following the procedures of Section 35.01 of the Municipal Code. When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the increased population

requires that a new ETJ member be appointed, the Town Council shall adopt a resolution requesting that the Watauga County Board of Commissioners appoint a qualified person as a member. Prior to adopting the resolution, when it pertains to positions created by vacancy due to the expiration of a term or resignation of a member, the Town Council may itself solicit applications for the position, and it may transmit its two top choices for each position to the Board of Commissioners. If the Board of Commissioners is unwilling to appoint either of the two applicants submitted by the Town Council, it may appoint a person of its own choosing. However, before appointing a new person to the Board of Adjustment, the Watauga County Board of Commissioners must hold a public hearing on the selection. Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The Watauga County Board of Commissioners shall select appointees only from those who apply at or before the public hearing and are otherwise qualified. A qualified person is one who lives in the ETJ, who expresses a willingness to familiarize him- or herself with the Town's UDO, Comprehensive Plan and all other duly adopted plans and ordinances relating to the regulation of development within the Town planning jurisdiction, who agrees to apply in good faith the Town's Unified Development Ordinance and Comprehensive Plan, and who expresses a willingness to serve on the Board of Adjustment. The Commissioners shall make the appointment within forty-five days following the public hearing. If, despite good faith efforts, enough qualified residents of the ETJ cannot be found to fill the seats reserved for residents of such area, then the Watauga County Board of Commissioners may appoint other residents of the county (including residents of the town) to fill these seats who are otherwise qualified. If the Watauga County Board of Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ.

[e] Avoidance of Conflicts of Interest: In making appointments to the Board of Adjustment, both the Town Council and the Watauga County Board of Commissioners shall consider the employment of current board members and alternates, and their spouses, and shall strive to create such employment diversity upon the board so as to minimize the likelihood that a conflict of interest with regard to a particular case will prevent the Board of Adjustment from assembling a full board of eight (8) members to hear the case. Therefore, in order to be considered for appointment to the Board, an applicant must provide the Town or County with information concerning his or her employment and that of his or her spouse, if any.

[f] Regular members and alternates shall be appointed for three (3) year staggered terms, but both may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms only.

[g] Members may be reappointed to successive terms without limitation.

[h] Unless the Town Council takes specific action to excuse the absences and reappoints a member after being informed by the Administrator of the member's removal, Regular Board of Adjustment members shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the regular meetings in any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. Alternate members shall likewise be removed for failure to attend or participate in three (3) consecutive meetings for which the member's attendance is requested. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Town Council may propose removal of a member for any other good cause related to the performance of Board duties, but before removal on that basis, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

[i] If a regular or alternate resident member moves outside the Town, or if an ETJ regular or alternate member moves outside the ETJ, that shall constitute a resignation from the board.

[j] A resident member alternate may sit only in lieu of a regular resident member and an ETJ alternate may sit only in lieu of the regular ETJ member. When so seated, alternates shall have the same powers and duties as the regular member they replace.

[k] A member of the Board of Adjustment may resign by notifying the Mayor, Town Manager, or Administrator.

Section 44. Meetings of the Board of Adjustment

[a] At a time which it establishes, the Board of Adjustment shall conduct a monthly meeting to be held so long as there are items for its consideration, and it may schedule additional meetings ("special meetings"), as necessary, so long as all notice requirements of Sections 118(c) and 119 are met.

[b] The Board of Adjustment may conduct its meetings in accordance with its duly adopted rules of procedures so long as they are not inconsistent with the provisions of this ordinance or State law, and the Board shall comply with the requirements of Article VI.

[c] The Board of Adjustment and any subcommittee, advisory group, or working group, by whatever name or designation (hereafter referred to as a

“subcommittee”) shall operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. At a minimum, all meetings of the Board of Adjustment or any subcommittee shall require all of the following:

- [1] A meeting which is open to the public, except as to closed session conducted in accordance with the law for the reasons authorized by the law.
- [2] Full and accurate minutes of the meeting, a copy of which shall be provided, once approved by the Board, to the Town Clerk.

[d] At any meeting of the Board of Adjustment, when the meeting is opened for public testimony, any person wishing to address the Board shall state his or her name.

- [1] If there is a signup sheet provided for speakers, speakers shall be recognized in the order in which they have signed up.
- [2] All persons addressing the Board of Adjustment shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situations where there is a risk of harm to any person present, providing such person(s) the opportunity to alter their behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

Section 45. Quorum

[a] A quorum for the Board of Adjustment shall consist of seven (7) members in cases involving property located in whole or in part in the ETJ. A quorum for the Board of Adjustment shall consist of five (5) members in cases involving property located wholly within the Town’s corporate limits. A quorum is necessary for the board to take official action.

[b] A member who has withdrawn from the meeting without being excused as provided in Section 46 shall be counted as present for purposes of determining whether a quorum is present.

Section 46. Voting

[a] The concurring vote of four fifths of the board members hearing and deciding a case or issue shall be necessary to reverse any order, requirement,

decision, or determination of the administrator or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance including the issuance or modification of a special-use permit, or to grant any variance. All other actions of the board shall be taken by majority vote. For purposes of this Section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

[b] Once a member is physically present at a board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with Subsection 46 [c] or has been allowed to withdraw from the meeting in accordance with Subsection 46 [d].

[c] A member shall not participate in or vote on any quasi-judicial matter in a manner that would violate an affected person's rights to an impartial decision maker. If an objection is raised to a member's participation and that member does not request recusal, the remaining members shall by majority vote rule on the objection. Impermissible conflicts include, but are not limited to:

- [1] Prior to hearing the matter, a member has a fixed opinion concerning the subject matter of the hearing that is not susceptible to change.
- [2] A member has had an undisclosed *ex parte* communications concerning the case before the Board of Adjustment.
- [3] A member has a close familial, business, or other associational relationship with a person who will be affected by the outcome of a decision by the Board of Adjustment.
- [4] A member has a direct or indirect financial interest in the outcome of the matter before the Board of Adjustment.

[d] A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.

[e] Except as authorized in subsection [c] above, a motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.

[f] A roll call vote shall be taken upon the request of any member.

[g] Both ETJ and resident members may participate and vote on all matters coming before the board involving property located in whole or in part in the

ETJ. On all other matters coming before the board, only resident members may participate and vote.

Section 47. Board of Adjustment Officers

[a] Unless the Town Council designates the Chair and Vice-Chair of the Board of Adjustment, it shall retain the power to choose its own Chair and Vice-Chair, but both must be resident members of the Board. The Board of Adjustment shall designate the Chair and Vice-Chair of any subcommittee. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms by the Town Council.

[b] The Chair or any member temporarily acting as Chair may administer oaths to witnesses coming before the board.

[c] The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

Section 48. Powers and Duties of Board of Adjustment

[a] The Board of Adjustment shall hear and decide:

- [1] Appeals from any order, decision, requirement, or determination made by the Administrator, as provided in Section 106.
- [2] Applications for special-use permits, as provided in Section 61.
- [3] Applications for variances, as provided in Section 107.
- [4] Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines, as provided in Section 109.
- [5] Any other matter the board is required to act upon by any other town ordinance.

[b] The Board of Adjustment may subpoena witnesses and compel the production of evidence.

[c] Limitations on the Powers of the Board of Adjustment

- [1] No individual member of the Board shall purport to speak or act on behalf of the Board without action by the Board or authorization in the Board's duly adopted Rules of Procedure explicitly authorizing the member to speak or act on its behalf.

- [2] No individual member of the Board, nor the Board itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Board to speak or act on its behalf.
- [3] Without an express grant of authority or explicit authorization by the Council, no individual member of the Board, nor the Board itself, may direct staff members of the Town to take action requiring the expenditure of Town funds.
- [4] The Board of Adjustment may not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Board of Adjustment on tasks assigned by the Town Council or it's designee.
- [5] The Board of Adjustment may create subcommittees or working groups within it's membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

Section 49. Appeals

[a] Every decision of the Board of Adjustment shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the Watauga County Clerk of Superior Court within 30 days of the last of the relevant following dates:

- [1] If a permit is issued or variance granted, the date the decision is filed with the Watauga County Register of Deeds;
- [2] If the application is denied or is not to be recorded with the Register of Deeds, the date the decision is filed in the office of the Administrator; or
- [3] The date a written copy of the decision is delivered to the applicant and every aggrieved party who has filed a written request for such copy with the secretary or Chair of the Board at the time of its hearing of the case. Note: The decision of the Board may be delivered to the applicant or aggrieved party who has duly requested a copy either by personal service or by registered mail or certified mail, return receipt requested, at the address provided by the applicant or aggrieved party.

Section 50. Reserved

Part VI Land Use Administrator and Planning Director

Section 51. Land Use Administrator

[a] Except as otherwise specifically provided, primary responsibility for administering and enforcing this ordinance may be assigned by the Town Manager to one or more individuals. The person or persons to whom these functions are assigned shall be referred to in this ordinance as the “land-use administrator” or “administrator”. The term “staff” or “Planning and Inspections staff” is sometimes used interchangeably with the term “administrator”.

[b] When enforcing this ordinance, the council recognizes that there may be instances where the administrator should be given the authority to approve limited deviations to some provisions of the ordinance. The administrator may approve a deviation only after the applicant has submitted documentation to demonstrate that one of the following conditions exists:

[1] A surveying error has occurred that has created a situation in which the applicant is unable to comply with the requirements of the ordinance.

[2] The configuration of the lot and location of existing structures is such that the applicant is unable to comply with the requirements of the ordinance and that the deviation being requested will not have a detrimental effect upon any adjacent property owner.

[3] Due to unique circumstances related to the development being proposed, the applicant is able to demonstrate that strict compliance with the ordinance will not be in the best interests of the town and that the deviation being requested will not have a detrimental effect upon any adjacent property owner.

[4] The applicant has agreed to take measures that would ameliorate the effects of the deviation and the owners of all property located within 150 feet have agreed in writing to the deviation being requested.

[c] A request for deviation shall be made before the permit is issued. Deviations may only be approved to the extent authorized below to the following provisions of the ordinance:

[1] Deviations from the requirements of Section 200. Schedule of Land Use Intensity Regulations, provided the deviation shall not exceed ten percent (10%) of any requirements.

[2] Deviations from the setback requirements of Section 206. Accessory Building Setback Requirements provided the deviation shall not exceed ten percent (10%) of any requirements.

[d] The authority given to the administrator to grant such deviations shall be construed to be permissive and not mandatory. The decision of the administrator, as to whether or not to grant a deviation, shall constitute the final decision of the town and is not appealable. In the event a deviation is not approved, the applicant shall have the right to request a variance from the Board of Adjustment.

Section 52. Planning Director

[a] The Planning Director is the administrative head of the Planning and Inspections Department. As provided for in Sections 93 and 94 the Planning Director is authorized to approve major and minor subdivision final plats.

Section 53. Reserved

Part VII Town Council

Section 54. The Town Council

[a] In considering proposed changes in the text of this ordinance or in the zoning map, the council acts in its legislative capacity and must proceed in accordance with the requirements of Article XXI.

[b] Unless otherwise specifically provided in this ordinance, in considering amendments to this ordinance or the zoning map, the council shall follow the regular, voting, and other requirements as set forth in other provisions of the town code, the town charter, or general law.

Section 55. Reserved

Section 56. Reserved

Section 57. Reserved

Section 58. Reserved

Section 59. Reserved

Section 60. Reserved