

## ARTICLE 2 ADMINISTRATIVE MECHANISMS

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### **2.01 Board of Adjustment**

**2.01.01** The Board is a quasi-judicial body which acts on specified appeals, variances, major subdivision preliminary plat approval and special use permit requests. Except for major subdivision preliminary plat approval, the decisions by the Board represent the final decision by the Town.

#### **2.01.02 Appointment and Terms of Board of Adjustment**

**A. Number of Members:** There shall be a Board of Adjustment consisting of five (5) regular members and three (3) alternate members. 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 regular member. When serving in place of a regular member, an alternate member shall have all the powers and duties of a regular member.

**B. Appointments, avoidance of conflicts of interest:** All members of the Board shall be appointed by Town Council following the procedures of § 35.01 of the Municipal Code. In making appointments to the Board, the Town Council shall consider the employment of current Board members, 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 from assembling quorum. Therefore, in order to be appointed to the Board, an applicant must provide the Town with information concerning his or her employment and that of his or her spouse, if any.

**C. Term:** Regular members and alternates shall be appointed for three (3) year staggered terms, but may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms only. Members may be reappointed to successive terms without limitation.

**D. Absences:**

1. 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. In the event of a long illness or other such cause for prolonged absence, however, as determined by the Administrator, the member shall be replaced; provided, however, that Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's proposed or actual removal.
  2. Regular Board members shall be automatically removed for unexcused failure to attend three (3) consecutive meetings or for unexcused failure to attend fifty percent (50%) of the regular meetings in any twelve (12) month period. For example, if a member misses six (6) of twelve (12) meetings during a twelve month period and two (2) of the absences are due to the member's illness, the member will be recorded as having missed four (4) of ten (10) meetings. Alternate members shall likewise be removed for unexcused failure to attend or participate in three (3) consecutive meetings for which the member's attendance is requested.
  3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.
  4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.
- E. Residency:** All members must be residents within the Town corporate limits. If a regular or alternate member moves outside the Town limits, that shall constitute a resignation from the Board.
- F. Resignation:** A member of the Board may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.
- G. Removal:** The Administrator or a member of the Town Council may propose removal of a member for good cause related to the performance of Board duties.
1. Before removal, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

### **2.01.03 Meetings of the Board of Adjustment**

- A. Schedule.** The Board shall conduct meetings in accordance with the meeting schedule adopted by Council, so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings") as necessary, so long as all notice requirements are met. Regardless of whether or not a quorum of the Board is present, any duly advertised regular or special meeting may be continued to a later date ("continuation meeting") without additional notice and advertising if the

date, time, and location of the continuation meeting is adopted and announced by a majority of the members present.

**B. Rules of Procedure:** The Board shall conduct its meetings in accordance with its duly adopted Rules of Procedure so long as they are not inconsistent with the provisions of this Ordinance or State law. The Rules of Procedure may address any of the following:

1. Scheduling and order of cases before the Board; and
2. Representation; and
3. Intervention of a person other than the applicant or appellant who has a special and substantial interest in the outcome of the case to fully participate as a party in the hearing; and
4. Pre-hearing procedures; and
5. Hearing procedures; and
6. Admissibility of evidence; and
7. Decision-making procedures; and
8. Length of meetings; and
9. Special meetings; and
10. Meeting decorum pursuant to Subsection 6.01.07(B); and
11. Such other matters as may be needed for the effective and proper functioning of the Board.

**C. Open Meetings:** The Board 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 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 law.
2. Minutes of the meeting, a copy of which shall be provided, once approved by the Board, to the Town Clerk.

#### **2.01.04 Board of Adjustment Officers**

**A.** Unless the Town Council designates the Chair and Vice-Chair of the Board, it shall retain the power to choose its own Chair and Vice-Chair. 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.

1. The Board shall designate the Chair and Vice-Chair of any subcommittee.

- B. If neither the Chair nor the Vice-Chair are present, the presiding officer shall be elected by majority vote.
- C. The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

**2.01.05 Duties of the Board of Adjustment**

- A. The Board is a quasi-judicial body that shall hear and decide:
  - 1. Appeals from any order, decision, requirement, interpretation, or determination made by the Administrator, as provided in Article 6 Board of Adjustment Hearings.
  - 2. Applications for special-use permits, as provided in Article 6 Board of Adjustment Hearings.
  - 3. Applications for variances, as provided in Article 6 Board of Adjustment Hearings.
  - 4. Applications for major subdivision preliminary plat approval, as provided in Article 6 Board of Adjustment Hearings.
  - 5. Appeals of the grant or denial of an application for a Certificate of Appropriateness by the Historic Preservation Commission.
  - 6. Any other matter the Board is required to act upon by any other Town Ordinance.
- B. 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, or 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, or the Board itself, may direct Staff to take action requiring the expenditure of Town funds.
  - 4. The Board shall 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 on tasks assigned by the Town Council or its designee.
  - 5. The Board 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.

(Ord. PL00147-010417, 02-16-2017; PL01809-082218, 10-15-2018)

**2.02 Planning Commission**

**2.02.01** The Planning Commission is an advisory board which makes recommendations to Council on future growth and development issues that affect the Town. The Planning Commission reviews and makes recommendations to the Council pursuant to Subsection 2.02.06.

**2.02.02 Appointment and Terms of Planning Commission Members**

**A. Number of Members:** There shall be a Planning Commission consisting of seven (7) members.

**B. Appointment of Members to the Planning Commission:** Members of the Planning Commission shall be appointed by the Town Council following the procedures of § 35.01 of the Municipal Code.

**C. Term:** 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. An Appalachian State University student member shall serve a term of one (1) year. Vacancies which occur for reasons other than the expiration of a term shall be filled as they occur only for the unexpired remainder of the term.

1. 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. Absences:**

1. 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.

- a. 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.

- b. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator, the member shall be replaced.

- c. Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal.

2. Planning Commission 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.

3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.

4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.

- E. Residency:** All members must be residents within the Town corporate limits. If a resident member moves outside the Town limits, that shall constitute a resignation from the Planning Commission, effective upon the date a replacement is appointed by the Council.
- F. Resignation:** A member of the Planning Commission may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.
- G. Removal:** 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.
  - 1. Before removal, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

**2.02.03 Meetings of the Planning Commission**

- A. Schedule:** The Planning Commission shall conduct meetings in accordance with the meeting schedule adopted by Council, so long as there are items for its consideration, and it may schedule additional meetings (“continuation meetings” and “special meetings”), as necessary, so long as all notice requirements are met. Regardless of whether or not a quorum of the Planning Commission is present, any duly advertised regular or special meeting may be continued to a later date (“continuation meeting”) without additional notice and advertising if the date, time, and location of the continuation meeting is adopted and announced by a majority of the members present.
  - 1. The Planning Commission shall also attend any public hearing on proposed Ordinance amendments. These public hearings will be scheduled no less frequently than on a quarterly basis in February, May, August and November.
- B. Rules of Procedure:** Since the Commission has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Article 6. However, it shall conduct its meetings so as to obtain necessary information and to promote the free and full exchange of ideas.
  - 1. 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 or if no one is designated the Commission can elect a presiding officer by majority vote.
  - 2. The agenda shall include only those matters within the responsibilities and powers of the Planning Commission as provided herein.
    - a. Absent an emergency matter, which can be placed upon the agenda by a unanimous vote of those present, only matters on the published agenda may be acted upon by the Commission.

- b. Issues considered under agenda items entitled, “other matters” or similar language shall only be for information, and other items or issues for information may be added to the agenda by majority vote of those present.
  3. 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.
  4. 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.
- C. Open Meetings:** 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.
    - a. An “official meeting” occurs whenever a regularly scheduled meeting of the Planning Commission or subcommittee occurs, whether or not a quorum is present, or a “special meeting” 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.
    - b. “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.
    - c. 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. Minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Commission or subcommittee.
  - a. Minutes of the Planning Commission or subcommittee shall be subject to revision and adoption by the group as a whole.

**D. Speakers:** 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. 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 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.

#### **2.02.04 Quorum and Voting**

- A.** A quorum is necessary for the Planning Commission to take official action.
  1. A quorum shall consist of at least seven (7) members.
- B.** All actions or recommendations of the Planning Commission or subcommittee are only effective or adopted upon majority vote of the members present, following a motion and second.



1. 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.
2. 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. ETJ members may vote on all matters considered by the Commission, regardless of the location of the property affected.

**2.02.05 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.

**2.02.06 Powers and Duties of Planning Commission**

- A. The Planning Commission may:
  1. Make studies of the area within its jurisdiction and surrounding areas; and
  2. Determine objectives to be sought in the development of the study area; and
  3. Prepare and adopt plans for achieving these objectives; and
  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, Section 9.02; and
  5. Advise the Council concerning the use and amendment of means for carrying out plans; and
  6. Make findings and recommendations to the Council concerning proposed zoning text and map amendments, as provided for and in compliance with Section 9.05; and

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 5 and 29 of this Ordinance; and
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; and
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; and
3. Without an express grant of authority or explicit authorization by the Council, no individual member of the Planning Commission, nor the Commission itself, shall direct Staff to take action requiring the expenditure of Town funds; and
4. The Planning Commission shall 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; and
5. The Planning 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.

**2.02.07 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.

(Ord. PL00147-010417, 02-16-2017; Ord. PL01809-082218, 10-16-2018)

## **2.03 Community Appearance Commission**

**2.03.01** The Community Appearance Commission is an advisory board which makes recommendations to Council on visual appearance, community beautification, and landscape development that affect the Town and reviews development requests pursuant to Subsection 2.03.06.

### **2.03.02 Appointment and Terms of Community Appearance Commission Members**

- A. The Community Appearance Commission shall consist 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. **Terms:** Community Appearance Commission members shall be appointed for three (3) year staggered terms.
  - 1. Members may continue to serve until their successors have been appointed.
  - 2. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur for the unexpired remainder of the term.

3. 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.

**C. Absences:**

1. 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.
  - a. 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.
  - b. 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.
  - c. Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal.
2. Community Appearance 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.
3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.
4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.

**D. Resignation:** A member of the Community Appearance Commission may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.

**2.03.03 Meetings of the Community Appearance Commission**

**A. Schedule:** The Community Appearance Commission shall conduct meetings in accordance with the meeting schedule adopted by Council, so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Continuation meetings may be scheduled without additional advertising if the date, time, and location of the meeting is adopted and announced by the Community Appearance Commission at a duly advertised meeting.

- B. Rules of Procedure:** Since the Commission has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Article 6. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.
1. 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 or if no one is designated the Commission can elect a presiding officer by majority vote.
  2. The agenda shall include only those matters within the responsibilities and powers of the Community Appearance Commission as provided herein.
    - a. Absent an emergency matter, which can be placed upon the agenda by a unanimous vote of those present, only matters on the published agenda may be acted upon by the Commission.
    - b. Issues considered under agenda items entitled, “other matters” or similar language shall only be for information, and other items or issues for information may be added to the agenda by majority vote of those present.
  3. 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.
  4. 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.
- C. Open Meetings:** 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 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.

- a. 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 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.
  - b. “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.
  - c. 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. Minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Commission or subcommittee.
    - b. Minutes of the Community Appearance Commission or subcommittee shall be subject to revision and adoption by the group as a whole.
- D. Speakers:** At any meeting of the Community Appearance 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. Speakers shall be recognized in the order in which they have signed up.
  2. Unless a different time limit is adopted by the Community Appearance 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 Community Appearance 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 Community Appearance 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.

**2.03.04 Quorum and Voting**

- A. A quorum is necessary for the Community Appearance Commission to take official action.
  1. A quorum shall consist of a simple majority of the appointed members.
- B. All actions or recommendations of the Community Appearance Commission are only effective or adopted upon majority vote of the members present, following a motion and second.
  1. 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.
  2. 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.

**2.03.05 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.

**2.03.06 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, urban forest protection and redevelopment of the Town's planning area; and
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; and
3. Develop educational programs and materials which inform the public on matters concerning community beautification and urban forest protection and other subjects detailed in Subsection 2.03.06(A)(1); and
4. Perform any other duty and exercise any other power enumerated at 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; and
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; and
3. Without an express grant of authority or explicit authorization by the Council, no individual member of the Commission, nor the Commission itself, shall direct Staff to take action requiring the expenditure of Town funds; and
4. The Community Appearance Commission shall 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; and
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.

(Ord. 20160224, 05-19-2016; Ord. 20160438, 03-16-2017; Ord. PL01809-082218, 10-16-2018)



**2.04 Historic Preservation Commission**

**2.04.01** The Historic Preservation Commission is responsible for the inventory of historical, architectural and culturally significant properties within the Town of Boone corporate limits and ETJ. The Historic Preservation Commission also makes recommendations to Council to promote, enhance and preserve the character and historic landmark or district in the Town's planning area. The Historic Preservation Commission operates pursuant to Subsection 2.04.06.

**2.04.02** Appointment and Terms of Historic Preservation Members

**A. Number of Members:** There shall be a Historic Preservation Commission consisting of seven members, all appointed by the Town Council.

1. All members must be residents of the Town's planning jurisdiction, with no fewer than five (5) member's residents of the Town and up to two (2) member's residents of the Town's extraterritorial planning jurisdiction (hereafter "ETJ").
2. Two (2) Town Council members shall serve on the Commission.
3. 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.

**B. Terms:**

1. 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.
2. Town Council members shall be appointed for one (1) year terms.
3. 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.
4. Except for Town Council members who may serve as many terms as appointed, members may be appointed to no more than two (2) successive terms, but a former member may be reappointed following a one-year period of non-membership.

**C. Absences:**

1. 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.
    - a. 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.
    - b. 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.
    - c. Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal.
  2. Historic Preservation 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.
  3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.
  4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.
- D. Residency:** All members must be residents within the Town corporate limits or ETJ. If a resident member moves outside the Town or 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.
- E. Resignation:** A member of the Historic Preservation Commission may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.

**2.04.03 Meetings of the Historic Preservation Commission**

- A. Schedule:** The Historic Preservation Commission shall conduct meetings in accordance with the meeting schedule adopted by Council, so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Continuation meetings may be scheduled without additional advertising if the date, time, and location of the meeting is adopted and announced by the Historic Preservation Commission at a duly advertised meeting.

- B. Rules of Procedure:** The Historic Preservation Commission shall 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 Commission shall comply with the requirements of Article 8. 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 Sections 8.03 and 8.06 of this Ordinance, it shall conduct itself in a quasi-judicial manner.
1. 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 or if no one is designated the Commission can elect a presiding officer by majority vote.
  2. The agenda shall include only those matters within the responsibilities and powers of the Historic Preservation Commission as provided herein.
    - a. Absent an emergency matter, which can be placed upon the agenda by a unanimous vote of those present, only matters on the published agenda may be acted upon by the Commission.
    - b. Issues considered under agenda items entitled, “other matters” or similar language shall only be for information, and other items or issues for information may be added to the agenda by majority vote of those present.
  3. 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.
  4. 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.
- C. Open Meetings:** At all times the Historic Preservation Commission 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:

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.
  - a. 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.
  - b. “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.
  - c. 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.
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. Minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Commission or subcommittee.
  - a. Minutes of the Historic Preservation Commission or subcommittee shall be subject to revision and adoption by the group as a whole.

**2.04.04 Quorum and Voting**

- A.** A quorum is necessary for the Historic Preservation Commission to take official action.
  1. A quorum shall consist of a simple majority of the appointed members.
- B.** All actions or recommendations of the Historic Preservation Commission are only effective or adopted upon majority vote of the members present, following a motion and second.
  1. 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 Historic Preservation Commission shall not only report the action or recommendation adopted, but the vote by which it was adopted.

2. 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.

**2.04.05 Historic Preservation Commission Officers**

- A. 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.
  1. The Historic Preservation Commission shall designate the Chair and Vice-Chair of any subcommittees.
  2. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for unlimited re-appointment.
  3. 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.

**2.04.06 Powers and Duties of Historic Preservation Commission**

- A. The Historic Preservation Commission shall, in accordance with the procedures of Article 8 of this Ordinance, have the following powers:
  1. Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance; and
  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"; and
  3. Recommend to the Town Council criteria and procedures for the protection and preservation of Historic Districts and Landmarks; and
  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; and
  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; and

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; and
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; and
8. Prepare and recommend the official adoption of a preservation element as part of the municipality's comprehensive plan; and
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; and
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; and
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 to take action requiring the expenditure of Town funds; and
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.

(Ord. PL01809-082218, 10-16-2018)

**2.05 Reserved**

(Ord. 20160224, 05-19-2016)

**2.06 Land Use Administrator**

**2.06.01 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 “Planning Director”, “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’ 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 16.01 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 16.07. Accessory Structure 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.

## 2.06.02 Interpretations

**A. Zoning Map Interpretations:** The Planning Director is authorized to interpret the zoning map and disputed questions of zoning district boundary lines.

1. A zoning map interpretation shall only be made upon proper written application.
2. Where uncertainty exists as to the boundary of districts as shown on the Official Zoning Map, the following rules shall apply:
  - a. A boundary indicated as approximately following the centerline of an alley, street, highway, stream or railroad shall be construed to follow such centerline;
  - b. A boundary indicated as approximately following a lot line, corporate limit, or extraterritorial boundary line, shall be construed as following such line, limit or boundary;
  - c. A boundary indicated as following the shoreline or the centerline of a stream, river, lake, or other bodies of water shall be construed to follow such shoreline or centerline, and in the event of change in the shoreline or centerline, the boundary shall be construed as moving with the actual shoreline or centerline;
  - d. A boundary indicated as approximately following the designated limit of a special flood hazard area shall be construed as following such limit;
  - e. Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement, using the scale of the Official Zoning Map;
  - f. Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

**B. Text Interpretation:** The Planning Director is authorized to interpret Ordinance text.

1. A text interpretation shall only be made upon proper written application.
2. Where uncertainty exists as to any meaning of this Ordinance, the provisions of Article 1 shall be used for guidance.
3. The Planning Director shall consult with the Town Attorney where there is uncertainty in the meaning of the Ordinance with respect to a substantive matter.

**C. Advisory Opinions Regarding Nonconformities:** An advisory interpretation or advisor opinion given by the Administrator is not binding and does not constitute a final and binding decision subject to appeal under Article 6.

**D. Procedure for Evaluating Unlisted Uses:** See procedures set forth in Section 15.02.



**2.06.03 Planning Director**

- A. The Planning Director is the administrative head of the Planning and Inspections Department.

**2.06.04 Floodplain Administrator**

- A. The Administrator or his/her designee, hereinafter referred to as the “Floodplain Administrator”, is hereby appointed to administer and implement the provisions of Article 30.

(Ord. 20150007, 02-23-2015; Ord. 20160222, 05-19-2016)

**2.07 Public Works Director**

**2.07.01** The Public Works Director is the administrative head of the Public Works Department.

**2.07.02** When referenced in this Ordinance, references to the Public Works Director shall include his or her designee.

(Ord. 20150007, 02-23-2015)

**2.08 Town Council**

**2.08.01** 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 9.
- 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 Code of Boone, the Town Charter, North Carolina General Statutes and the North Carolina Constitution.

(Ord. 20150007, 02-23-2015)