

Article 3 - Administrative Mechanisms

Section 16-3.1. Planning Board. There shall be a Planning Board consisting of nine members. Eight members, appointed by the Town Board of Commissioners, shall reside within the town limits. One member, appointed by the Watauga County Board of Commissioners, shall reside within that portion of the Town's extraterritorial jurisdiction that lies within Watauga County. If, despite good faith efforts, a resident of the extraterritorial jurisdiction cannot be found to fill the seat reserved for residents of such area, then the Watauga County Board of Commissioners may appoint any other resident of the County (including residents of the Town of Blowing Rock) to fill such seat. If the County Board fails to make an appointment within ninety days after receiving a resolution from the Town Board requesting that an appointment be made, the Town Board may make the appointment and terms. All members may participate in and vote on all issues before the Planning Board, regardless of whether the issue affects property within the Town or within the extraterritorial planning area.

16-3.1.1. Members. Planning Board members shall be appointed for three-year staggered terms, but members may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms only. Members may be appointed to successive terms without limitation. Planning Board members may be removed by the Town Board of Commissioners at any time for failure to attend three consecutive regularly scheduled meetings or for failure to attend four or more of the meetings within any twelve-month period or for any other good cause related to performance of duties. Beginning with new appointments in March 2018, members may be limited to two terms of service.

16-3.1.1.1. All members appointed shall, before entering their duties, qualify by taking an oath of office as required by G.S. 160D-309.

16-3.1.2. Meetings of the Planning Board. The planning board shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with Section 16-4.19 (Applications to be Processed Expeditiously). Minutes shall be kept of all board proceedings.

16-3.1.2.1. 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 4, 5, and 6. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

16-3.1.2.2. All board meetings shall be open to the public, and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting.

16-3.1.2.3. Whenever the board is called upon to make recommendations concerning a, special use permit request, or zoning amendment proposal, the staff shall post on or near the subject property one or more notices that are sufficiently conspicuous in terms of size, location, and content to provide reasonably adequate notice to potentially interested persons of the matter that will appear on the board's agenda at a specified date and time. Such notice(s) shall be posted at least seven days prior to the meeting at

which the matter is to be considered. The staff shall also send written notice to adjoining property owners if and to the extent required by any regulation or requirement of the planning board adopted under Section 16-3.1.5.7.

16-3.1.3. Quorum and Voting. A quorum for the planning board shall consist of five members. A quorum is necessary for the board to take official action. All actions of the planning board shall be taken by majority vote, a quorum being present. A roll call vote shall be taken upon the request of any member.

16-3.1.4. Planning Board Officers. The Planning Board shall elect the Board Chair and Vice-Chair from among its regular members. Each officer shall serve a one-year term and may be reelected to serve subsequent terms. The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

16-3.1.5. Powers and Duties of Planning Board. The Planning Board shall have the powers and duties listed herein:

16-3.1.5.1. Make studies and recommend to the Board plans, goals and objectives relating to the growth, development and redevelopment of the town and the surrounding extraterritorial planning area.

16-3.1.5.2. Develop and recommend to the Board policies, ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner.

16-3.1.5.3. Make recommendations to the Board concerning proposed special use permits and proposed zoning map changes, as provided by Sections 16-4.12 and 16-23.3.

16-3.1.5.4. To act as the Watershed Review Board on proposed plats of land subdivision and hear major and minor variance requests related to subdivisions within the designated Water Supply Watersheds.

16-3.1.5.5. To hear cases concerning major and minor variances, vested rights, administrative reviews and appeals involving the interpretation or application of the Watershed Protection Ordinance in designated Water Supply Watersheds. Perform any other duties assigned by the Board.

16-3.1.5.6. The Planning Board shall, in conjunction with its annual budget request, submit to the Board of Commissioners a progress report of its activities during the current fiscal year. In addition, not later than thirty days after the close of the fiscal year, the planning board shall submit to the Board of Commissioners a report on its activities during the entire fiscal year just completed.

16-3.1.5.7. The planning board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of the chapter.

Section 16-3.2. Board of Adjustment. There shall be a Board of Adjustment consisting of six regular members and three alternates. The Blowing Rock Board of Commissioners shall appoint five regular members and three alternates, each of whom shall be residents of the Town. The

Watauga County Board of Commissioners shall be entitled to appoint one regular member in the manner prescribed for appointments to the Planning Board in Section 16-3.1, above.

16-3.2.1. Members. Each alternate member, while serving in any regular or special meetings of the Board of Adjustment, shall have and may exercise all the powers and duties of a regular member. Members may be reappointed to successive terms without limitation. Board of Adjustment members may be removed by the Blowing Rock Board of Commissioners at any time for failure to attend three consecutive regularly scheduled meetings or for failure to attend four or more of the meetings within any twelve-month period or for any other good cause related to performance of duties. Beginning with new appointments in March 2018, members may be limited to two terms of service.

16-3.2.1.1. Board of Adjustment members, as well as alternates, shall be appointed for three-year staggered terms. Vacancies may be filled for the unexpired terms only.

16-3.2.1.2. The member appointed to represent the area of extraterritorial jurisdiction may vote only on matters pertaining to the area of extraterritorial jurisdiction.

16-3.2.1.3. All members appointed shall, before entering their duties, qualify by taking an oath of office as required by G.S. 160D-309.

16-3.2.2. Meetings of the Board of Adjustment. Meetings of the board of adjustment shall be held at the call of the chairman or vice chairman and at such other times as the board may determine; however, the board shall meet frequently enough so that it can take action in conformity with Section 16-4.19 (Applications to be Processed Expeditiously). Minutes shall be kept of all board proceedings.

16-3.2.2.1. The Board shall conduct its hearings in accordance with the quasi-judicial procedures set forth in Articles 4, 5, and 6.

16-3.2.2.2. All meetings of the board shall be open to the public, and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting.

16-3.2.3. Quorum. A quorum for the Board of Adjustment shall consist of four members (including any alternates) with respect to matters involving properties within the town and five members (including alternates) with respect to matters involving properties within the extraterritorial planning jurisdiction.

16-3.2.3.1. A quorum is necessary for the Board to take official action. A member who has withdrawn from the meeting without being excused as provided in Section 16-3.2.4 shall be counted as present for purposes of determining whether a quorum is present.

16-3.2.4. Voting. The concurring vote of four-fifths of the Board of Adjustment (including alternates sitting in lieu of regular members) shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the 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 calculations of the requisite majority if there are no qualified alternates available to take the place of such members. The

Board shall not hear a request for a variance or an appeal unless there are sufficient members present (including seated alternates) to decide the matter as specified herein.

16-3.2.5. Board of Adjustment Officers. The Board of Adjustment shall elect the Board Chair and Vice-Chair from among the regular in-town members appointed by the Town Board of Commissioners. Each officer shall serve a one-year term and may be reelected to serve subsequent terms. The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

16-3.2.6. Powers and Duties of Board of Adjustment. The Board of Adjustment shall hear and decide the following matters:

16-3.2.6.1. Appeals from any order, decision, requirement, or interpretation made by the Administrator, as provided in Section 16-5.1.

16-3.2.6.2. Applications for variances, as provided in Section 16-5.2.

16-3.2.6.3. Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines, as provided in Section 16-5.3.

16-3.2.6.4. Any other matter the Board is required to act upon by any other Town ordinance.

16-3.2.6.5. The Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this chapter.

Section 16-3.3. Land Use Administrator. Except as other specifically provided, primary responsibility for administering and enforcing this chapter may be assigned to one or more individuals by the board of commissioners or Land Use Administrator as appropriate. The person or persons to whom these functions are assigned shall be referred to in this chapter as the "land use administrator", "administrator", or Planning Director. The term "staff" is sometimes used interchangeably with the term "administrator".

Section 16-3.4. Board of Commissioners. The Board of Commissioners, in considering special use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Articles 4 and 5 of this chapter. In considering proposed changes in the text of this chapter or in the zoning map, including the establishment of Conditional Districts, the Board acts in its legislative capacity and must proceed in accordance with the requirements of Article 23. Unless otherwise specifically provided in this chapter, in acting upon special use permit requests or in considering amendments to this chapter or the zoning map, the Board 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 16-3.5. Conflicts of Interest. Service on a governing board, appointed board or administrative staff of the Town of Blowing Rock is a public trust. Each person has a duty to represent the public interest fairly and honestly. To protect the integrity of governmental decisions and to promote public confidence in the decisions, no person shall use their position for private gain. The following conflict-of-interest standards are provided for the governing board, advisory boards, and administrative staff, in accordance with NCGS 160D-109.

16-3.5.1. Governing Board. A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter, where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

16-3.5.2. Appointed Boards. Members of appointed boards shall not vote on advisory or legislative decisions regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

16-3.5.3. Administrative Staff. No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship.

16-3.5.4. Legal Opinions and Disqualification. Any official covered by this section may seek an opinion from the Town Attorney as to the applicability of this section to a particular decision or set of facts. The response to such a request shall be made to the member making the request, and a copy shall be provided to the chair of the body to which the member belongs. By majority vote, any Town board may seek the opinion of the Town Attorney as to the applicability of this section to a particular decision or set of facts. If an opinion is received from the Town Attorney that a member has an impermissible conflict of interest pursuant to this section and the member does not recuse himself or herself, the board may by majority vote disqualify that member from all participation in the matter involved.

16-3.5.5. Enforcement. If a member participates in a decision in violation of this section, the decision of the board shall be void, and the matter shall be reheard without that member's participation. If no objection to the member's participation has been filed with the board making the decision within ten days of the decision, this section shall be deemed to have been complied with. Any member who intentionally participates in a decision for which this section requires disqualification shall be guilty of a misdemeanor, punishable as provided in NCGS 14-4.

16-3.6. Public Land, Appearance, and Recreation Board

16-3.6.1 Membership and Vacancies. There shall be a Public Land, Appearance, and Recreation Board (herein after referred to as “Board”) consisting of seven (7) members, all of whom shall be citizens and residents of the planning and zoning jurisdiction of the town. Members shall be appointed by the board of commissioners for three-year staggered terms, but members may continue to serve until their successors have been appointed. Vacancies occurring for reasons other than the expiration of terms shall be filled as they occur for the period of the unexpired term. It is desirable that at least one member be a design professional, and at least one member have a background in recreation, coaching, or sports administration.

16-3.6.1.1. Members may be removed from the board by the mayor for due cause. Faithful attendance at the meetings of the board and conscientious performance of the duties of members shall be considered a prerequisite for continued membership on the board.

16-3.6.1.2. Members of the board shall serve without pay but may be reimbursed for actual expenses incident to the performance of their duties within the limits of funds available to the board.

16-3.6.1.3. All members appointed shall, before entering their duties, qualify by taking an oath of office as required by G.S. 160D-309.

16-3.6.2. Organization, Rules, Meetings and Records. Within thirty days after its appointment, the public land, appearance, and recreation board shall meet and elect a chairman, vice-chairman, secretary and treasurer. It may create and fill such other offices as it may determine. The term of each officer shall be one year. They may be re-elected. The board shall adopt rules for the transaction of its business and shall keep a record of its members' attendance and of its resolutions, discussions, findings and recommendations, which records shall be open to the public. The board shall meet as needed. All of its meetings shall be open to the public. For the purpose of taking any official action authorized or required by this article, there shall be present a quorum of four (4) members.

16-3.6.3. Responsibilities and Duties

(A) It shall be the responsibility and duty of the public land, appearance, and recreation board:

- (1) To initiate, promote and assist in the implementation of general community beautification in the town and its environs.
- (2) To seek to coordinate the activities of individuals, agencies and organizations, public and private, whose plans, activities, and programs bear upon the appearance of the town and its environs.
- (3) To provide leadership and guidance in matters of area community design and appearance to individuals and to public and private organizations and agencies.
- (4) To make studies of the appearance characteristics and problems of the town and its environs, including surveys and inventories of an appropriate nature, and to

recommend standards and policies of design for the town, any portion or neighborhood thereof, or any project to be undertaken.

- (5) To prepare both general and specific plans for the improved appearance of the town.
- (6) To make recommendations upon any permit or other item referred to the board by the board of commissioners, planning board, board of adjustment, or administrator.
- (7) To take any other action authorized by this chapter or any other ordinance or resolution adopted by the board of commissioners.
- (8) To review proposed amendments and improvements to town parks, facilities, properties, public ways, and rights-of-ways, and to provide recommendations to the Board of Commissioners related to the proposals. The board shall maintain a process to review and forward recommendations to the Board of Commissioners when review is requested by the Board of Commissioners. All requests shall be reviewed by the board in a prompt and expeditious manner and recommendations shall be in writing and forwarded to the Board of Commissioners.
- (9) To review the requests of individuals, agencies, or organizations, public and private, whose plans, activities, programs, and funding bear upon the appearance of the Town. The board shall maintain an application process for these requests and forward in writing the recommendations to the Board of Commissioners.
- (10) To review proposed public art and murals, and to provide recommendations related to the proposals. The board shall maintain a permit application and process to review and forward recommendations to the Board of Commissioners for approval or denial of the application. All applications shall be reviewed by the board in a prompt and expeditious manner and recommendations shall be in writing and forwarded to the Board of Commissioners.
- (11) To take any other action authorized by this chapter or any other ordinance or resolution adopted by the board of commissioners.
- (12) To serve as the Tree Board in conjunction with the Blowing Rock Landscaping Department to include the short- and long-range management of trees within public street rights-of-way, Town-owned property, and other public property in the Town.

(B) The following specific duties are hereby conferred upon the public land, appearance, and recreation board:

- (1) To ask the proper officials of any public agencies of the state and its political subdivisions for plans for public buildings, facilities or projects to be located within the town.
- (2) To review such plans as well as permit applications referred to the board and make recommendations regarding appearance suitability to the appropriate agency or to the planning board, board of adjustment or board of commissioners. All plans shall be reviewed by the board in a prompt and expeditious manner, and all recommendations of the commission with regard to any public project shall be made

in writing. Copies shall be transmitted promptly to the appropriate town board and to the appropriate agency.

- (3) To direct the attention of officials to the needed enforcement of any ordinance that may in any way affect the appearance of the town.
- (4) To make recommendations related to the use of recreational facilities and public lands.
- (5) To seek voluntary adherence to the standards and policies of its plans.
- (6) To enter upon private land for the purpose of making examinations or surveys, with the consent and permission of the person in possession of such property.
- (7) To promote public interest in and an understanding of its recommendations, studies and plans, and to that end to prepare, publish and distribute to the public such studies and reports as well, in the opinion of the board, advance the cause of improved municipal appearance.
- (8) To formulate and recommend to the town planning board and board of commissioners the adoption or amendment of ordinances regulating the use of property that will, in the opinion of the board, serve to enhance the appearance of the town and its surrounding area.
- (9) To act as the Tree Board and coordinate efforts with the Town Landscape Department to satisfy requirements of maintaining and expanding the Town's status as a Tree City, USA member.
- (10) To be the lead civic organization coordinating and the chief sponsor of the annual Town Clean-up Week.

16-3.6.4. Annual Report and Budget.

- (A) In conjunction with the submission of the budget request, the board shall submit to the board of commissioners a progress report of its activities during the present fiscal year. A report of the entire fiscal year, July through June, shall be submitted to the board of commissioners no later than thirty days after the close of the fiscal year.
- (B) The board may present requests to the board of commissioners no later than April 1 of each year for the purpose of incorporating in the budget future recreation, preservation, restoration and landscaping projects to include establishment, maintenance and replacement of gardens. Anticipated revenues for the next fiscal year from non-city sources shall be indicated. The requests will be reviewed and, if approved, recommended for inclusion in the proposed budget.

16-3.6.5. Receipt and Expenditure of Funds. The board may receive contributions from private agencies, foundations, organizations, individuals, the state or federal government or any other source, in addition to any sums appropriated for its use by the board of commissioners. It may accept and disburse these funds for any purpose within the scope of its authority as specified in this article. All sums appropriated by the board of commissioners to further the work and purposes of the board are deemed to be for a public purpose.

Article 4 - Permits and Final Plat Approval

Section 16-4.1. Zoning and Special Use Permits. Subject to Section 16-17.6 (Sign Permits), the use made of property may not be substantially changed (see Section 16-10.8) substantial clearing, grading or excavation may not be commenced, and buildings or other substantial structures may not be constructed, erected, moved, or substantially altered except in accordance with and pursuant to one of the following permits:

- a) a Zoning permit issued by the Administrator; or
- b) a Special Use permit issued by the Board of Commissioners.

16-4.1.1. For purposes of this Section, buildings or other substantial structures within the CB, GB, TC, or OI Districts shall be deemed "substantially altered", thereby requiring the issuance of a zoning permit, if the applicant proposes to change in any significant manner the exterior appearance of said building or other substantial structure. More specifically, for example, a change in paint color of a building or other substantial structure within the CB, GB, TC, or OI Districts shall require the issuance of a zoning permit by the Administrator.

16-4.1.2. Zoning permits, special use permits, and sign permits are issued under this chapter only when a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this chapter if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued in reliance thereon, and except as otherwise provided in Section 16-4.14, all development shall occur strictly in accordance with such approved plans and applications.

16-4.1.3. Physical improvements to land to be subdivided may not be commenced except in accordance with a special use permit issued by the Board of Commissioners for major subdivisions or after final plat approval by the Administrator for minor subdivisions (see Part II of this article).

16-4.1.4. A zoning permit, special use permit, or sign permit shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements lawfully imposed by the permit-issuing authority. All such permits issued with respect to tracts of land in excess of one acre (except sign permits and zoning permits for single-family and two-family residential uses) shall be recorded in the Watauga County or Caldwell County Registry, as appropriate after execution by the record owner.

16-4.1.5. If development regulations change after an application has been submitted, the applicant may choose the version of the regulation that will apply. The applicant must comply with the new regulations if they delay for more than six months. (NCGS 160D-108(b))

Section 16-4.2. No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled. Issuance of a special use or zoning permit authorizes the recipient to commence the activity resulting in a change in use of the land or (subject to obtaining a building permit) to commence work designed

to construct, erect, move, or substantially alter buildings or other substantial structures or to make necessary improvements to a subdivision. However, except as provided in Sections 16-4.8, and 16-4.12.1, the intended use may not be commenced, no building may be occupied, and in the case of subdivisions, no lots may be sold until all of the requirements of this chapter and all additional requirements imposed pursuant to the issuance of a special use permit have been complied with.

Section 16-4.3. Who May Submit Permit Applications. Applications for zoning, special use, or sign permits, or minor subdivision plat approval, will be accepted only from persons having the legal authority to take action in accordance with the permit or the minor subdivision plat approval. In general, this means that applications should be made by the owners or lessees of property, or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this chapter, or the agents of such persons (who may make application in the name of such owners, lessees, or contract vendees). The Administrator may require an applicant to submit evidence of authority to submit the application in accordance with Section 16-4.4 whenever there appears to be a reasonable basis for questioning this authority.

Section 16-4.4. Applications to be Complete. All applications for zoning, special use, or sign permits must be complete before the permit issuing authority is required to consider the application.

16-4.4.1. Subject to Section 16-4.5.3, an application is complete when it contains all of the information that is necessary for the permit issuing authority to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this chapter.

16-4.4.2. In this chapter, detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more of the appendices to this chapter. It is not necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these appendices, so long as the plans provide sufficient information to allow the permit issuing authority to evaluate the application in the light of the substantive requirements set forth in this text of this chapter. However, whenever this chapter requires a certain element of a development to be constructed in accordance with the detailed requirements set forth in one or more of these appendices, then no construction work on such element may be commenced until detailed construction drawings have been submitted to and approved by the Administrator. Failure to observe this requirement may result in permit revocation, denial of final subdivision plat approval, or other penalty as provided in Article 7.

16.4.4.3. The presumption established by this chapter is that all of the information set forth in Appendix A is necessary to satisfy the requirements of this section. However, it is recognized that each development is unique, and therefore the permit issuing authority may allow less information or require more information to be submitted according to the needs of the particular case. For applications submitted to the Board of Commissioners or Board of

Adjustment, the applicant may rely in the first instance on the recommendations of the Administrator as to whether more or less information than that set forth in Appendix A should be submitted.

16-4.4.4. The Administrator shall make every effort to develop application forms, instructional sheets, checklists, or other techniques or devices to assist applicants in understanding the application requirements and the form and type of information that must be submitted. In classes of cases where a minimal amount of information is necessary to enable the Administrator to determine compliance with this chapter, such as applications for zoning permits to construct single-family or two-family houses or applications for sign permits, the Administrator shall develop standard forms that will expedite the submission of the necessary plans and other required information.

Section 16-4.5. Staff Consultation Before Formal Application. To minimize development planning costs, avoid misunderstanding or misinterpretation, and ensure compliance with the requirements of this chapter, pre-application consultation between the developer and the Administrator is encouraged as provided in this section.

16-4.5.1. Before submitting an application for a special use permit authorizing a development that consists of or contains a major subdivision, the developer shall submit to the Administrator a sketch plan of such subdivision, drawn approximately to scale (1 inch = 100 feet). The sketch plan shall contain:

- a) The name and address of the developer;
- b) The proposed name and location of the subdivision;
- c) The approximate total acreage of the proposed subdivision;
- d) The tentative street and lot arrangement;
- e) Topographic lines;
- f) Any other information the developer believes necessary to obtain the informal opinion of the Administrator as to the proposed subdivision's compliance with the requirements of this chapter.

16-4.5.2. The Administrator shall meet with the developer as soon as conveniently possible to review the sketch plan.

16-4.5.3. Before submitting an application for any other permit, developers are strongly encouraged to consult with the Administrator concerning the application of this chapter to the proposed development.

Section 16-4.6. Staff Consultation After Application Submitted. Upon receipt of a formal application for a zoning, or special use permit, or minor plat approval, the Administrator shall review the application and confer with the applicant to ensure that they understand the Administrator's interpretation of the applicable requirements of this chapter, that they have submitted all of the information that they intend to submit, and that the application represents precisely and completely what they propose to do. If the application is for a special use permit, the Administrator shall place the application on the agenda of the Board of Commissioners when the applicant indicates that the application is as complete as they intend to make it. However,

as provided in Section 16-4.4, if the Administrator believes that the application is incomplete, he shall recommend to the Board that the application be denied on that basis.

Section 16-4.7. Zoning Permits. A completed application form for a zoning permit shall be submitted to the Administrator by filing the application with the Administrator in the inspections department. The Administrator shall issue the zoning permit unless he finds, after reviewing the application and consulting with the applicant as provided in Section 16-4.5, that:

- a) The requested is not within the jurisdiction according to the *Table of Permissible Uses*; or
- b) The application is incomplete; or
- c) If completed as proposed in the application, the development will not comply with one or more requirements of this chapter (not including those requirements concerning which a variance has been granted or those the applicant is not required to comply with under the circumstances specified in Article VIII, Nonconforming Situations).

Section 16-4.8. Performance Guarantee to Ensure Compliance with Zoning Permit. In cases when, because of weather conditions or other factors beyond the control of the zoning permit recipient (exclusive of financial hardship), it would be unreasonable to require the zoning permit recipient to comply with all of the requirements of this chapter prior to commencing the intended use of the property or occupying any buildings, the Administrator may authorize the commencement of the intended use or the occupancy of buildings (insofar as the requirements of this chapter are concerned) if the permit recipient provides a performance bond, letter of credit, or other security satisfactory to the Administrator to ensure that all of the requirements of this chapter will be fulfilled within a reasonable period (not to exceed twelve months) determined by the Administrator.

Section 16-4.9. Special Use Permits. An application for a special Use permit shall be submitted to the Board of Commissioners by filing the application with the Administrator.

16-4.9.1. Before being presented to the Board of Commissioners, an application for a special Use permit shall be referred to the Planning Board for action in accordance with this section. The Board of Commissioners may not hold a public hearing on a special use permit application until the Planning Board has had an opportunity to consider the application pursuant to standard agenda procedures. In addition, at the request of the Planning Board, the Board of Commissioners may continue the public hearing to allow the Planning Board more time to consider or reconsider the application.

16-4.9.2. When presented to the Planning Board, the application shall be accompanied by a report setting forth the staff's proposed findings concerning the application's compliance with Section 16-4.4 and other requirements of this chapter, as well as any staff recommendations for additional requirements to be imposed by the Board of Commissioners. If the staff report proposes a finding or conclusion that the application fails to comply with Section 16-4.4 or any other requirement of this chapter, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

16-4.9.3. The Planning Board shall consider the application and the attached staff report in a timely fashion, and may, in its discretion, hear from the applicant or members of the public.

(Notice to the adjoining property owners is provided for in Section 16-3.1.2.3.

16-4.9.4. After reviewing the application, the Planning Board shall report to the Board of Commissioners whether it concurs in whole or in part with the staff's proposed findings and conditions, and, to the extent there are differences, the Planning Board shall propose its own recommendations and the reasons, therefore.

16-4.9.5. In response to the Planning Board's recommendations, the applicant may modify their application prior to submission to the Board of Commissioners, and the staff may likewise revise its recommendations.

Section 16-4.10. Board of Commissioners Action on Special Use Permits.

16-4.10.1. Public Hearing. Within 45 days of receiving the recommendations of the Planning Board, the Board of Commissioners shall conduct a quasi-judicial hearing on the application. Notice of the date, time and place of the public hearing shall be published in a newspaper of general circulation once a week for two successive weeks with the first notice to be published not less than ten nor more than 25 days prior to the date of the hearing. Similar notice shall also be mailed to the owner of the property which is the subject of the application and the owners of all parcels of land situated within 150 feet of any of the boundaries of the subject parcel. Ownership shall be determined by reference to the Watauga County or Caldwell County tax listings.

16-4.10.2. Final Action. Upon completion of the hearing required in paragraph (A), above, the Board of Commissioners shall act on the application based on the findings of fact contained in paragraph (C), below. Action on the application shall be one of the following: (1) Approval; (2) Approval subject to conditions; or (3) Denial. The Administrator shall notify the applicant of Board's decision in writing. If the application is approved or approved with conditions, the Administrator shall issue the permit in accordance with the action of Board.

16-4.10.3. Findings of Fact. No special use permit shall be approved by the Board of Commissioners unless each of the following findings is made.

- a) The use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.
- b) The use or development complies with all required regulations and standards of the Land Use Ordinance or with variances thereto, if any, and with all other applicable regulations.
- c) The use or development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.
- d) The use or development will not substantially injure the value of adjoining or abutting property.
- e) The use or development conforms with the general plans for the physical development of the Town as embodied in this Ordinance, the Town of Blowing Rock Comprehensive Plan, and any other duly adopted plans of the Town.

The burden of establishing these findings of fact shall lie upon the applicant. In addressing the issue of compatibility, as required in paragraph (3), above, the applicant must demonstrate compatibility with the *particular* neighborhood in which the development or

use is to be located. The fact that a use is authorized as a special use within a zoning district classification shall not give rise to a presumption that such special use is compatible with other uses authorized in the zoning district classification.

Section 16-4.11. Conditions to Approval of the Special Use Permit. The Board of Commissioners may attach reasonable and appropriate conditions to the approval of a special use permit. Any such conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, water and sewer improvements, storm water drainage, the provision of open space, and other matters that the Board of Commissioners may find appropriate, or the applicant may propose. Such conditions to approval of the petition may include dedication to the Town, County or State, as appropriate, of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development. Only those conditions mutually approved in writing by the Town and the applicant may be incorporated into the permit requirements.

Section 16-4.12. Performance Guarantee Under Special Use Permits. In cases when, because of weather conditions or other factors beyond the control of the permit recipient (exclusive of financial hardship) it would be unreasonable to require the permit recipient to comply with all of the requirements of this chapter before commencing the intended use or the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this chapter are concerned) if the permit recipient provides a performance bond, letter of credit or other security satisfactory to the board to ensure that all of these requirements will be fulfilled within a reasonable period (not to exceed twelve months).

16-4.12.1. When the Board of Commissioners imposes additional requirements upon the permit recipient in accordance with Section 16-4.11 or when the developer proposes in the plans submitted to install amenities beyond those required by this chapter, the Board may authorize the permittee to commence the intended use of the property or to occupy any building or to sell any subdivision lots before the additional requirements are fulfilled or the amenities installed if it specifies a certain date by which or a schedule according to which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:

16-4.12.2. A performance bond or other security satisfactory to the Board is furnished;

16-4.12.3. A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient's compliance will be reviewed when application for renewal is made;

16-4.12.4. The nature of the requirements or amenities is such that sufficient assurance of compliance is given by Section 16-7.4 (Penalties and Remedies for Violations) and Section 16-7.5 (Permit Revocation).

16-4.12.5. With respect to subdivisions in which the developer is selling only underdeveloped lots, the Board may authorize final plat approval and the sale of lots before all the

requirements of this chapter are fulfilled if the subdivider provides a performance bond or other security satisfactory to the Board to ensure that all of these requirements will be fulfilled within not more than twelve months after final plat approval.

Section 16-4.13. Completing Developments in Phases. If a development is constructed in phases or stages in accordance with this section, then, subject to Section 16-4.13.2 the provisions of this Section (No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled) and Section 16-56 (exceptions to Section 16-4.2) shall apply to each phase as if it were the entire development.

16-4.13.1. As a prerequisite to taking advantage of the provisions of Section 16-4.13 the developer shall submit plans that clearly show the various phases or stages of the proposed development and the requirements of this chapter that will be satisfied with respect to each phase or stage.

- 1) Site specific development plans shall be vested for a period of two years, but not more than five years, if warranted by the size and phasing of development.
- 2) Multiphase developments containing 100 acres or more shall be vested for the entire development, for a period of seven years from the time the site plan is approved.

16-4.13.2. If a development that is to be built in phases or stages includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or tennis courts in a residential development) then, as part of the application for development approval, the developer shall submit a proposed schedule for completion of such improvements. The schedule shall relate completion of such improvements to completion of one or more phases or stages of the entire development. Once a schedule has been approved and made part of the permit by the permit issuing authority, no land may be used, no buildings may be occupied, and no subdivision lots may be sold except in accordance with the schedule approved as part of the permit, provided that:

16-4.13.3. If the improvement, is one required by this chapter, then the developer may utilize the provisions Sections 16-4.12 or 16-4.12.5.

16-4.13.4. If the improvement is an amenity not required by this chapter or is provided in response to a condition imposed by the Board, then the developer may utilize the provisions of Section 16-4.12.1.

Section 16-4.14. Expiration of Permits. Zoning, special use, and sign permits shall expire automatically if, within one year after the issuance of such permits, one or more of the following exists:

- a) The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or
- b) Less than ten percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased development (see Section 16-4.13), this requirement shall apply only to the first phase.

- c) If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one year, then the permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 16-4.15.

16-4.14.1. The permit issuing authority may extend for a period up to six months the date when a permit would otherwise expire pursuant to Sections 16-4.14 or 16-4.14.c if it concludes that:

- a) the permit has not yet expired;
- b) the permit recipient has proceeded with due diligence and in good faith; and
- c) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods of up to six months upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.

16-4.14.2. For purposes of this section, the permit within the jurisdiction of the Board of Commissioners is issued when the Board votes to approve the application and issue the permit. A permit within the jurisdiction of the Administrator is issued when the earlier of the following takes place:

- a) A copy of the fully executed permit is delivered to the permit recipient; (delivery is accomplished when the permit is hand delivered or mailed to the permit applicant); or
- b) The Administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions, such as having the permit executed by the property owner so it can be recorded if required under Section 16-4.1.4.

Section 16-4.15. Effect of Permit on Successors and Assigns. Zoning, special use and sign permits authorize the permittee to make use of land and structures in a particular way. Such permits are transferable. However, so long as the land or structures or any portion thereof covered under a permit continue to be used for the purposes for which the permit was granted, then no person (including successors or assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit. The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property for which the permit was originally issued.

Section 16-4.16. Notice of Permit to be Recorded. Whenever a zoning, or special use permit is issued to authorize development (other than single-family or two-family residences) on a tract of land in excess of one acre, nothing authorized by the permit may be done until the record owner of the property has caused notice of such permit to be recorded in the Watauga County or Caldwell County Registry, as applicable, and indexed under the record owner's name.

Section 16-4.17. Amendments to and Modifications of Permits. Insignificant deviations from the permit (including approved plans) issued by the Board of Commissioners or the Administrator are permissible, and the Administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.

16-4.17.1. Minor design modifications or changes in permits (including approved plans) are permissible with the approval of the permit issuing authority. Such permission may be obtained without a formal application, public hearing, or payment of any additional fee. For purposes of this section, minor design modifications or changes are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.

16-4.17.2. All other requests for changes in approved plans will be processed as new applications. If such requests are required to be acted upon by the Board of Commissioners, new conditions may be imposed in accordance with Section 16-4.10, but the applicant retains the right to reject such additional conditions by withdrawing the request for an amendment and may then proceed in accordance with the previously issued permit.

16-4.17.3. The Administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in Sections 16-4.17.

Section 16-4.18. Reconsideration of Board Action. Whenever the Board of Commissioners disapproves a special use permit application or the Board of Adjustment disapproves an application for a variance on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the respective board at a later time unless the applicant clearly demonstrates one or more of the following:

16-4.18.1. Circumstances affecting the property that is the subject of the application have substantially changed; or

16-4.18.2. The application is changed in some substantial way; or

16-4.18.3. New information is available that could not with reasonable diligence have been presented at a previous hearing.

Section 16-4.19. Applications to be Processed Expeditiously. Recognizing that inordinate delays in acting upon appeals or applications may impose unnecessary costs on the appellant or applicant, the Town shall make every reasonable effort to process appeals and permit applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this chapter.

Section 16-4.20. Maintenance of Common Areas, Improvements, and Facilities. The recipient of any zoning, special use, or sign permit, successor, shall be responsible for maintaining all common areas, improvements or facilities required by this chapter or any permit issued in accordance with its provisions, except those areas, improvements or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private roads

and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

Section 16-4.21. Major and Minor Subdivisions. Major subdivisions are subject to a two-step approval process. Physical improvements to the land to be subdivided are authorized by a special use permit as provided in Section 16-4.1 of this chapter, and sale of lots is permitted after final plat approval as provided in Section 16-4.21.3. Minor subdivisions only require a one-step approval process: final plat approval (in accordance with Section 16-4.21.2).

16-4.21.1. No Subdivision Without Plat Approval. As provided in NCGS 160D-807, no person may subdivide land except in accordance with all of the provisions of this chapter. In particular, no person may subdivide land unless and until a final plat of the subdivision has been approved in accordance with the provisions of Section 16-4.21.3 or Section 16-4.21.3 and recorded in the Watauga County or Caldwell County Registry, as applicable. As provided in NCGS 160D-803, the Watauga County or Caldwell County Register of Deeds shall not record a plat of any subdivision within the town's planning jurisdiction unless the plat has been approved in accordance with the provisions of this chapter.

16-4.21.2. Minor Subdivision Approval. The Administrator shall approve or disapprove minor subdivision final plats in accordance with the provisions of this section.

16-4.21.2.1. The applicant for minor subdivision plat approval, before complying with subsection 16-4.3, shall submit a sketch plan to the administrator for a determination of whether the approval process authorized by this section can be and should be utilized. The administrator may require the applicant to submit whatever information is necessary to make this determination, including, but not limited to, a copy of the tax map showing the land being subdivided and all lots previously subdivided from that tract of land within the previous five years.

16-4.21.2.2. Applicants for minor subdivision approval shall submit to the Administrator a copy of a plat conforming to the requirements set forth in Sections 16-4.21.3.1 and 16-4.21.3.2 (as well as two prints of such plat), except that a minor subdivision plat shall contain the following certificates in lieu of those required in Section 16-4.21.4:

a) *Certificate of Ownership*

I hereby certify that I am the owner of the property described hereon, which property is within the subdivision regulation jurisdiction of the Town of Blowing Rock, and that I freely adopt this plan of subdivision.

Owner

Date

b) *Certificate of Approval*

I hereby certify that the minor subdivision shown on this plat does not involve the creation of new public streets or any change in existing public streets, that the subdivision shown is in all respects in compliance with Chapter 16 of the Blowing Rock Town Code, and that therefore this plat has been approved by the Town of Blowing

Rock, subject to its being recorded in the Watauga/Caldwell County Registry within 30 days of the date below.

Administrator

Date

c) A Certificate of Survey and Accuracy, in the form stated in Section 16-4.21.2.2c.

16-4.21.2.3. The Administrator shall take expeditious action on an application for minor subdivision plat approval as provided in Section 16-4.19. However, either the administrator or the applicant may at any time refer the application to the major subdivision approval process.

16-4.21.2.4. Within a period of five years no more than a total of three lots may be created out of one tract using the minor subdivision plat approval process.

16-4.21.2.5. Subject to Section 16-4.21.2.3, the administrator shall approve the proposed subdivision unless the subdivision is not a minor subdivision as defined in Section 16-2.2 or the application or the proposed subdivision fails to comply with Section 16-4.21.2.4 or any other applicable requirement of this chapter.

16-4.21.2.6. If the subdivision is disapproved, the administrator shall promptly furnish the applicant with a written statement of the reasons for disapproval.

16-4.21.2.7. Approval of any plat is contingent upon the plat being recorded within thirty days after the date the Certificate of Approval is signed by the administrator.

16-4.21.3. Major Subdivision Approval Process. The Board of Commissioners shall approve or disapprove major subdivision final plats in accordance with the provisions of this section.

16-4.21.3.1. The applicant for major subdivision plat approval shall submit to the administrator a final plat, drawn in waterproof ink on a sheet made of material that will be acceptable to the appropriate county register of deed's office for recording purposes, and having dimensions as follows: either (i) 21"x 30"; (ii) 12"x 18"; or (iii) 18"x 24". When more than one sheet is required to include the entire subdivision, all sheets shall be made of the same size and shall show appropriate match marks on each sheet and appropriate references to other sheets of the subdivision. The scale of the plat shall be at one (1) inch equals not more than one hundred (100) feet. The applicant shall also submit two prints of the plat.

16-4.21.3.2. In addition to the appropriate endorsements, as provided in Section 16-4.21.4, the final plat shall contain the following information:

- a) All of the information specified in G.S. 47-30 and G.S. 39-32.3;
- b) The name of the subdivision, which name shall not duplicate the name of any existing subdivision as recorded in the Watauga County or Caldwell County Registry, as applicable;
- c) The name of the subdivision owner or owners;
- d) The township, county and state where the subdivision is located; and

e) The name of the surveyor and registration number and the date of the survey.

16-4.21.3.3. The Board of Commissioners shall approve the proposed plat unless it finds that the plat or the proposed subdivision fails to comply with one or more of the requirements of this chapter or that the final plat differs substantially from the plans and specifications approved in conjunction with the special use permit that authorized the development of the subdivision.

16-4.21.3.4. If the final plat is disapproved by the Board, the applicant shall be furnished with a written statement of the reasons for the disapproval and shall be given an opportunity to petition the Board for a hearing, to be conducted in accordance with the procedures for processing special use permit applications. Following such hearing, the Board may reverse, modify, or affirm its earlier decision.

16-4.21.3.5. Approval of the final plat is contingent upon the plat being recorded within thirty (30) days after the approval certificate is signed by the Administrator.

16-4.21.4. Endorsements on Major Subdivision Plats. All major subdivision plats shall contain the endorsements listed herein. The endorsements listed in Section 16-4.21.4(d) shall appear on plats of all major subdivisions located outside the corporate limits of the town but within the planning jurisdiction.

a) *Certificate of Approval*

I hereby certify that all streets shown on this plat are within the Town of Blowing Rock's planning jurisdiction, all streets and other improvements shown on this plat have been installed or completed or that their installation or completion (within twelve months after the date below) has been assured by the posting of a performance bond or other sufficient surety, and that the subdivision shown on this plat is in all respects in compliance with Chapter 16 of the Blowing Rock Town Code, and therefore this plat has been approved by the Blowing Rock Board of Commissioners, subject to its being recorded in the Watauga/Caldwell County Registry within 30 days of the date below.

Date

Administrator

b) *Certificate of Ownership and Dedication*

I hereby certify that I am the owner of the property described hereon, which property is located within the subdivision regulation jurisdiction of the town of Blowing Rock, that I hereby freely adopt this plan of subdivision and dedicate to public use all areas shown on this plat as streets, alleys, walks, parks, open space, and easements, except those specifically indicated as private, and that I will maintain all such areas until the offer of dedication is accepted by the appropriate public authority. All property shown on this plat as dedicated for a public use shall be deemed to be dedicated for any other public use authorized by law when such other use is approved by the Blowing Rock Board of Commissioners in the public interest.

Date

Owner

Notarized

c) *Certificate of Survey and Accuracy*

I hereby certify that this map (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (a deed description recorded in Book _____, Page _____ of the _____ County Registry) (other); that the error of closure as calculated by latitudes and departures is 1: _____; that the boundaries not surveyed are shown as broken lines plotted from information found in Book _____, Page _____, and that this map was prepared in accordance with G.S. 47-30 as amended. Witness my hand and seal this _____ day of _____, 20__.

Registered Land Surveyor

d) *Division of Highways District Engineer Certificate*

I hereby certify that the public streets shown on this plat have been completed, or that a performance bond or other sufficient surety has been posted to guarantee their completion, in accordance with at least the minimum specifications and standards of the N.C. Department of Transportation for acceptance of subdivision streets on the State highway system for maintenance.

District Engineer

16-4.21.5. Plat Approval Not Acceptance of Dedication Offers. Approval of a plat does not constitute acceptance by the town of the offer of dedication of any streets, sidewalks, parks or other public facilities shown on a plat. However, the town may accept any such offer of dedication by resolution of the Board or by actually exercising control over and maintaining such facilities.

16-4.21.6. Performance Guarantee Prior To Final Plat Approval.

- a) Whenever all public facilities or improvements intended for dedication are installed before final plat approval, the developer shall post a performance bond or other sufficient surety to ensure that the town will have funds available to complete the required infrastructure in the event that the developer fails to do so.
- b) A licensed architect or registered engineer retained by the developer shall certify to the town that all facilities and improvements to be dedicated to the town have been constructed in accordance with the requirements of this chapter. This certification shall be a condition precedent to acceptance by the town of the offer of dedication of such facilities or improvements.

16-4.21.7. Maintenance of Dedicated Areas Until Acceptance. As provided in Section 16-4.20, all facilities and improvements with respect to which the owner makes an offer of dedication to public use shall be maintained by the owner until such offer of dedication is accepted by the appropriate public authority.”