

## ARTICLE 2 ADMINISTRATIVE MECHANISMS

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### 2.01 Board of Adjustment

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

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

**A. Membership.** 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.** Members of the Board shall be appointed by the Town Council following the procedures set forth in Chapter 35 of the Municipal Code. In making appointments, 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 a quorum. Therefore, in order to be appointed to the Board, an applicant must provide the Town with information concerning their employment and that of their spouse, if any.

**C. Residency Requirement.** Members of the Board of Adjustment must be residents of the Town of Boone, but a member who moves outside the town limits may continue to serve on a case in which they participated prior to moving outside the town limits until that case is completed.

#### 2.01.03 Meetings of the Board of Adjustment

**A. 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.

**2.01.04 Board of Adjustment Chair and Vice-Chair**

- A.** In or about July of each year, the Board will accept and review applications from the current membership for Chair and Vice-Chair positions and forward a recommendation on these positions to Town Council. Upon receipt of the Board's recommendations, Council shall review the submitted applications and the Board recommendations before designating the Chair and the Vice-Chair. The members 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 Powers and 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 or State law.

(Ord. PL00147-010417, 02-16-2017; Ord. PL01809-082218, 10-16-2018; Ord. PL04195-090820, 12-17-2020; Ord. PL04727-050721, 07-01-2021)

## **2.02 Planning Commission**

**2.02.01** The Planning Commission is an advisory board that makes recommendations to Council on future growth and development issues that affect the Town and advises Town Council concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604. In addition to or as part of its regular meeting schedule, the Planning Commission shall attend public hearings on proposed zoning text and map amendments scheduled by the Town Council.

**2.02.02 Membership.** The Planning Commission shall consist of seven (7) members.

### **2.02.03 Planning Commission Chair and Vice-Chair**

**A.** In or about July of each year, the Commission shall accept and review applications from the current membership for Chair and Vice-Chair positions and forward a recommendation on these positions to Council. Upon receipt of the Commission's recommendations, Council shall review the submitted applications and the Planning Commission recommendations before designating the Chair and the Vice-Chair. The members 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. The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

1. The Commission 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.

### **2.02.04 Powers and Duties of the Planning Commission**

**A.** The Planning Commission may:

1. Prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.

2. Facilitate and coordinate citizen engagement and participation in the planning process.
3. Develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
4. Advise the governing board concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604. 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. Exercise any functions in the administration and enforcement of various means for carrying out plans that the governing board may direct.
6. 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
7. Perform any other related duties that the Council may direct.

**2.02.05 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.
- 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. PL001809-082218, 10-16-2018; Ord. PL04195-090820, 12-17-2020; Ord. PL04727-050721, 07-01-2021)

**2.03 Community Appearance Commission**

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

**2.03.02 Membership.** There shall be a Community Appearance Commission consisting of seven (7) members. 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.

**2.03.03 Community Appearance Commission Chair and Vice-Chair**

**A.** Unless the Town Council designates the Chair and Vice-Chair of the Community Appearance Commission, the Commission shall 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 only.

1. The Community Appearance Commission shall designate the Chair and Vice-Chair of any subcommittees.

**B.** The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

**C.** If neither the Chair nor the Vice-Chair are present, the presiding officer shall be elected by majority vote.

**2.03.04 Powers and Duties of the Community Appearance Commission**

**A.** The Community Appearance Commission may:

1. Initiate, promote, and assist in the implementation of programs of general community beautification in the Town.

2. Coordinate the activities of individuals, agencies, and organizations, public and private, whose plans, activities, and programs bear upon the appearance of the Town.

3. Provide leadership and guidance in matters of area or community design and appearance to individuals, to public and private organizations.

4. Make studies of the visual characteristics and problems of the Town, including surveys and inventories of an appropriate nature, and to recommend standards and policies of design for the entire area, any portion or neighborhood thereof, or any project to be undertaken.

5. Prepare both general and specific plans for the improved appearance of the Town. These plans may include the entire area or any part thereof and may include private as well as public property. The plans shall set forth desirable standards and goals for the aesthetic enhancement of the Town or any part thereof within its area of

planning and development regulation jurisdiction, including public ways and areas, open spaces, and public and private buildings and projects.

6. Participate, in any way deemed appropriate by the Town Council and specified in the ordinance establishing the commission, in the implementation of its plans. To this end, the Town may include in the ordinance the following powers:
  - a. To request from the proper officials of any public agency or body, including agencies of the State and its political subdivisions, its plans for public buildings, facilities, or projects to be located within the Town's planning and development regulation jurisdiction.
  - b. To review these plans and to make recommendations regarding their aesthetic suitability to the appropriate agency or to the planning or governing board. All plans shall be reviewed by the commission in a prompt and expeditious manner, and all recommendations of the commission with regard to any public project shall be made in writing. Copies of the recommendations shall be transmitted promptly to the planning or governing board and to the appropriate agency.
  - c. To formulate and recommend to the appropriate planning or governing board the adoption or amendment of ordinances, including zoning regulations, subdivision regulations, and other local development regulations, that will, in the opinion of the commission, serve to enhance the appearance of the city or county and surrounding areas.
  - d. To direct the attention of Town officials to needed enforcement of any ordinance that may in any way affect the appearance of the city or county.
  - e. To seek voluntary adherence to the standards and policies of its plans.
  - f. To enter, in the performance of its official duties and at reasonable times, upon private lands and make examinations or surveys.
  - g. To promote public interest in and an understanding of its recommendations, studies, and plans, and, to that end, prepare, publish, and distribute to the public such studies and reports that will, in the opinion of the commission, advance the cause of improved appearance.
  - h. To conduct public meetings and hearings, giving reasonable notice to the public thereof. Perform any other duty assigned by the Council that is authorized pursuant to N.C. Gen. Stat. § 160D-960.

**2.03.05** The commission shall, no later than April 15 of each year, submit to the governing board a written report of its activities.

(Ord. 20160224, 05-19-2016; Ord. 20160438, 03-16-2017; Ord. PL01809-082218, 10-16-2018; Ord. PL04195-090820, 12-17-2020; Ord. PL04727-050721, 07-01-2021)

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**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. 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 2.04.05.

**2.04.02 Membership.** There shall be a Historic Preservation Commission consisting of five (5) members. To the extent qualified persons can be found, the majority 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.

**2.04.03 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.

**2.04.04 Historic Preservation Commission Chair and Vice-Chair**

**A.** In or about July of each year, the Commission will accept and review applications from the current membership for Chair and Vice-Chair positions in order to forward a recommendation on these positions to Council. Upon receipt of the Commission's recommendations, Council shall review the submitted applications and the Historic Preservation Commission recommendations before designating the Chair and the Vice-Chair. The people so designated shall serve in these capacities for terms on one (1) year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms only.

1. The Historic Preservation Commission shall designate the Chair and Vice-Chair of any subcommittees.

**B.** The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for unlimited re-appointment.

**C.** The Chair and Vice-chair may take part in all deliberations and vote on all issues.

**2.04.05 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 landowners 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.

(Ord. PL01809-082218, 10-16-2018; PL04195-090820, 12-17-2020; Ord. PL04727-050721, 07-01-2021; Ord. PL05270-110121, 12-08-2021)

## **2.05 Generally Applicable Provisions**

**2.05.01** The following provisions are applicable to every board and committee established under or this Article and to every subcommittee created by any such board or committee (collectively referenced in this section as "board"), except as specifically provided otherwise in the preceding sections, Article 6, or state law.



- A. Appointment of Members.** Members of each board shall be appointed by the Town Council pursuant to the procedures set forth at Chapter 35 of the Municipal Code.
- B. Designated student member.** Except for the Board of Adjustment, one membership position on each board, shall be designated for an Appalachian State University student; *provided*, that more than one Appalachian State University student position may be appointed in the discretion of Town Council. The designated Appalachian State University student member shall serve a term of one (1) year.
- C. Term.** Regular members and any alternate members shall be appointed for three (3) year staggered terms, but may continue to serve until their successors have been appointed. Vacancies shall be filled for the unexpired terms only. 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. 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.
- D. Oath of Office.** All members appointed to boards under this Article shall, before entering their duties, qualify by taking an oath of office as required by G.S. 160A-61.
- E. Absences.**
1. Board members shall be 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 be removed for unexcused failure to attend or participate in three (3) consecutive meetings for which the member's attendance is requested.
  2. The Administrator shall notify in writing any member for whom one more absence will trigger removal.
  3. Absences due to sickness, emergencies, or other exigencies shall be recognized as excused absences and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board. For example, if a member misses six of twelve meetings during a twelve-month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings.
  4. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator, the member shall be replaced.
  5. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.
  6. Council may act to excuse absences in advance or to reappoint a member after being informed by the Administrator of the member's removal.
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- F. Residency requirements.** Every member of each committee and board established under this Article must be a resident of the Town of Boone. Except as provided at 2.01.02(C) above with respect to Board of Adjustment members, a member who moves outside the Town limits shall be deemed to have resigned from the board effective immediately.
- G. Resignation.** A member of a 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.
- H. 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. Before removal, the member shall be given an opportunity to appear before the Town Council to address the issues involved.
- I. Meetings; meeting schedule.** A 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 announced by the Chair.
- J. Open Meetings.** Every board shall operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, “the law”). At a minimum, all meetings of any board shall require all of the following:
1. Other than for an emergency meeting, notice 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 board, it shall also be posted.
    - a. An “official meeting” occurs whenever a regularly scheduled meeting of a board occurs, whether or not a quorum is present, or whenever a majority of the board meets, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business.
    - 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 requiring the immediate consideration of the Board. 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 that 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 reviewed and approved by the board.

**K. Speakers.** When a board meeting includes a provision for public comment, any person wishing to address the board shall state their name and whether or not they are a resident of the Town. For clarification, this subsection does not apply to the Board of Adjustment, which is governed by its own Rules of Procedure and Article 6 herein; nor does this subsection apply to the Historic Preservation Commission when it is acting in its quasi-judicial capacity and is governed by its Rules of Procedures and Article 6 herein.

1. Speakers shall be recognized in the order in which they have signed up.
2. Unless a different time limit is adopted by the board, 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 request that all such persons designate a spokesperson for their group to address the board, 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 a board 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.

**L. Meetings of Advisory Boards**

1. **Meeting procedures.** When a board is meeting in an advisory capacity (rather than in a quasi-judicial role), it need not conduct its meetings in accordance with the quasi-judicial procedures set forth in Article 6. However, every board shall conduct its meetings so as to obtain necessary information and to promote the free and full exchange of ideas.

- a. The agenda shall include only those matters within the responsibilities and powers of the board as provided herein.
- b. 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 board.
- c. 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.
- d. Meetings of a board shall proceed in the following order: adoption of an agenda, approval of the minutes, public comment (when public comment is to be accepted), unfinished business, new business, and informal discussion. By majority vote of the members in attendance, the order of business may be altered.
- e. The business of every board 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 board shall be respectful to each other and shall avoid interrupting each other.

**M. Quorum and Voting**

- 1. A quorum is necessary for a board to take official action. Except as otherwise provided by this Ordinance or other law, a quorum shall consist of a majority of the members of the board. Vacant positions are not counted as members for purposes of calculating quorum. A member who is present shall be counted for purposes of quorum even if recused from voting.
- 2. Unless otherwise required by law or this Ordinance, all actions or recommendations of a board are only effective or adopted upon majority vote of the members present, following a motion and second.
- 3. In the case of a divided vote on any question on which the board is required to act, the record shall include the vote of each member. When such action is to be reported to the Council, the board shall not only report the action or recommendation adopted, but the vote by which it was adopted.
- 4. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the board, and the members of the board can hear the member.
- 5. A roll call vote shall be taken upon the request of any member.

**N. Limitations on Board and Board Member Powers**

1. No individual member of a board shall purport to speak or act on behalf of the board without action by the board explicitly authorizing the member to speak or act on its behalf; and
2. No individual member of a board, nor the board itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the board to speak or act on its behalf; and
3. Without an express grant of authority or explicit authorization by the Council, no individual member of a board, nor the board itself, shall direct Staff to take action requiring the expenditure of Town funds; and
4. A board shall not create any group external to its membership without the explicit prior approval and/or appointment of the Town Council; and
5. A board may not create a subcommittee or working group within its membership without explicit approval of the Town Council.

**O. Conflicts of Interest**

1. Members of appointed boards shall not vote on any advisory or 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.
2. 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.
3. A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

(Ord. 20160224, 05-19-2016; Ord. PL04195-090820, 12-17-2020; Ord. PL04727-050721, 07-01-2021)

**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 landowner.
  - 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 landowner.
  - 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 development approval 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 Conflicts of Interest**

- A.** No staff member shall make a final decision on an administrative decision 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. For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

- B. No staff member who is financially interested or employed by a business financially interested in a development subject to regulation under this Ordinance shall be involved in any manner in the review or decision-making with respect to such development.
- C. No staff member or other individual or an employee of a company contracting with the Town to provide staff support shall engage in any work that is inconsistent with their duties or with the interest of the Town, as determined by the Town.

### **2.06.03 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 substantive matter.

**C. Advisory Opinions Regarding Nonconformities:** An advisory interpretation or advisory 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 Subsection 14.02.06.

**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 their 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; Ord. PL04727-050721, 07-01-2021)

**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 their designee.

(Ord. 20150007, 02-23-2015; Ord. PL04727-050721, 07-01-2021)

**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)



