

CHAPTER 16 - LAND USE ORDINANCE

Article III - Administrative Mechanisms

Part I. Planning Board

Section 16-21 Appointment and Terms of Planning Board Members.

(A) 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.

(B) 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.

(C) Members may be appointed to successive terms without limitation.

(D) 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.

(E) 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.

[Amended January 11, 2011]

Section 16-22 Meetings of the Planning Board

(A) The planning board shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with Section 16-66 (Applications to be Processed Expeditiously).

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

(C) Minutes shall be kept of all board proceedings.

(D) 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.

(E) Whenever the board is called upon to make recommendations concerning a conditional use permit request, special use permit request, or a minor 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 subsection 16-25(C).

Section 16-23 Quorum and Voting.

(A) A quorum for the planning board shall consist of five members. A quorum is necessary for the board to take official action.

(B) All actions of the planning board shall be taken by majority vote, a quorum being present.

(C) A roll call vote shall be taken upon the request of any member.

[Amended August 12, 2003]

Section 16-24 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.

[Amended January 11, 2011]

Section 16-25 Powers and Duties of Planning Board.

(A) The planning board may:

- (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.
- (2) Develop and recommend to the Board policies, ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner.
- (3) Make recommendations to the Board concerning proposed conditional use permits and proposed zoning map changes, as provided by Sections 16-56 and 16-322.
- (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.
- (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.
- (6) Perform any other duties assigned by the Board.

(B) 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.

(C) The planning board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of the chapter.

[Amended March 11, 1997]

Sections 16-26 through 16-28 Reserved.

Part II. Board of Adjustment

Section 16-29 Appointment and Terms of Board of Adjustment.

(A) There shall be a Board of Adjustment consisting of six regular members and three alternates. The Town 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 16-21, above.

Each alternate member, while serving in any regular or special meeting of the Board of Adjustment, shall have and may exercise all the powers and duties of a regular member.

(B) 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.

(C) Members may be reappointed to successive terms without limitation.

(D) Board of Adjustment 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.

(E) The member appointed to represent the area of extraterritorial jurisdiction may vote only on matters pertaining to the area of extraterritorial jurisdiction.

[Amended January 11, 2011]

Section 16-30 Meetings of the Board of Adjustment.

(A) 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 16-66 (Applications to be Processed Expeditiously).

(B) The Board shall conduct its hearings in accordance with the quasi-judicial procedures set forth in Articles IV, V, and VI.

(C) 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.

[Amended January 11, 2011]

Section 16-31 Quorum.

(A) 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. A quorum is necessary for the Board to take official action.

(B) A member who has withdrawn from the meeting without being excused as provided in Section 16-32 shall be counted as present for purposes of determining whether a quorum is present.

[Amended January 11, 2011]

Section 16-32 Voting.

With respect to properties located within the Town, the concurring vote of four members of the Board of Adjustment (including alternates sitting in lieu of regular members) shall be necessary to reverse any order, requirement, decision, or determination of the Administrator or to decide in favor of the applicant any matter upon which the board is required to pass under any ordinance or to grant any variance. With respect to properties located within the extraterritorial planning jurisdiction, the concurring vote of five members (including alternates sitting in lieu of regular members) shall be necessary to take any of the foregoing actions. All other actions of the board shall be taken by majority vote, a quorum being present.

[Amended January 11, 2011]

Section 16-33 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.

[Amended January 11, 2011]

Section 16-34 Powers and Duties of Board of Adjustment.

(A) The Board of Adjustment shall hear and decide the following matters:

- (1) Appeals from any order, decision, requirement, or interpretation made by the Administrator, as provided in Section 16-91.
- (2) Applications for variances, as provided in Section 16-92.
- (3) Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines, as provided in Section 16-93.

(4) Any other matter the Board is required to act upon by any other Town ordinance.

(B) The Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this chapter.

[Amended January 11, 2011]

Sections 16-35 and 16-36 Reserved.

Part III. Land Use Administrator

Section 16-37 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. The person or persons to whom these functions are assigned shall be referred to in this chapter as the "land use administrator" or "administrator". The term "staff" is sometimes used interchangeably with the term "administrator".

Section 16-38 Reserved.

Part IV. Board of Commissioners

Section 16-39 Board of Commissioners.

(A) The board of commissioners, in considering conditional use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Articles IV and VI of this chapter.

(B) In considering proposed changes in the text of this chapter or in the zoning map, the Board acts in its legislative capacity and must proceed in accordance with the requirements of Article XX.

(C) Unless otherwise specifically provided in this chapter, in acting upon conditional 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.

Part V. Appearance Commission

Section 16-40 Membership and Vacancies.

(A) There shall be an appearance advisory commission consisting of fifteen members, all of whom shall be citizens and residents of the town. Members shall be appointed by the board of commissioners. Five of the members shall be appointed for terms of one year, five for two years and five for three years. Their successors shall be appointed for terms of three years. 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 one member be a member of a design profession.

(B) In making appointments to the appearance advisory commission, the Board shall seek to appoint persons who possess qualities of impartiality, maturity and broad judgment, and in whom the community at large may be expected to have confidence.

(C) Members may be reappointed to the appearance advisory commission upon the expiration of terms. They may be removed from the commission by the mayor for due cause. Faithful attendance at the meetings of the commission and conscientious performance of the duties of members shall be considered a prerequisite for continued membership on the commission.

(D) Members of the commission 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 commission.

Section 16-41 Organization, Rules, Meetings and Records.

Within thirty days after its appointment, the appearance advisory commission 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 commission 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 commission shall hold at least one meeting per month. 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 eight members.

Section 16-42 Responsibilities and Duties

(A) It shall be the responsibility and duty of the community appearance advisory commission:

- (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 commission 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.

(B) The following specific duties are hereby conferred upon the appearance advisory commission:

- (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 commission 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 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 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 seek voluntary adherence to the standards and policies of its plans.
- (5) 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.
- (6) 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 will, in the opinion of the commission, advance the cause of improved municipal appearance.
- (7) 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 commission, serve to enhance the appearance of the town and its surrounding area.

Section 16-43 Annual Report and Budget.

(A) In conjunction with the submission of the budget request, the commission 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 commission may present requests to the board of commissioners no later than April 30 of each year for the purpose of incorporating in the budget future beautification, 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.

Section 16-44 Receipt and Expenditure of Funds.

The commission 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 commission are deemed to be for a public purpose.

Part VI. Architectural Review Commission

[Editor's Note: By Resolution No. 2000-02, adopted by the Board of Commissioners on February 15, 2000, the Architectural Review Commission was dissolved. The duties of the Commission were assigned to the Zoning Staff and the Board of Commissioners as provided in that resolution.]

Section 16-45.01 Membership and Vacancies

(A) There shall be an Architectural Review Commission consisting of seven members, all of whom shall be citizens and residents of the Town. Members shall be appointed by the Board of Commissioners. It is desirable that one member be a member of a design profession. It shall be a requirement that at least one member also be a member of the Appearance Commission.

(B) Architectural Review Commission members shall be appointed for three year staggered terms. Vacancies may be filled for the unexpired terms only.

(C) Members may be reappointed to successive terms without limitation. Members of the Commission 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 Commission.

(D) Architectural Review Commission members may be removed by the 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. Upon request of the member proposed for removal, the Board of Commissioners shall hold a hearing on the removal before it becomes effective.

[Amended September 12, 1999; February 15, 2000]

Section 16-45.02 Meetings of the Architectural Review Commission.

(A) The Architectural Review Commission shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with Section 16-66 (Applications to be Processed Expeditiously).

(B) Minutes shall be kept of all Commission proceedings.

(C) All Commission meetings shall be open to the public and the agenda for each Commission meeting shall be made available at least 48 hours in advance of the meeting.

(D) Whenever the Commission is called upon to make a decision concerning a conditional use permit request or a significant change to the exterior of a commercial building (not including such minor changes such as a change in color, a change in signage, or the addition of a canopy), the staff shall send written notice to adjoining property owners at least ten days before the Commission meeting. Such notice shall be sent to those persons (as listed on the real estate tax roll) who own property within 150 feet of the lot that is the subject of the application.

[Amended September 12, 1999]

Section 16-45.03 Quorum and Voting.

(A) A quorum for the Commission shall consist of four members if there are no vacant seats or one vacant seat, and three members if there are two or more vacant seats. A quorum is necessary for the board to take official action.

(B) All actions of the Commission shall be taken by majority vote, a quorum being present.

(C) A roll call vote shall be taken upon the request of any member.

[Amended September 12, 1999]

Section 16-45.04 Organization and Rules, Meetings and Records.

Within 30 days after its appointment, the Architectural Review Commission shall meet and elect a Chairman and Vice-Chairman. It may create and fill such other offices as it may determine. The term of each officer shall be one year, and officers may be re-elected. The Commission 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.

[Note: This Section was previously numbered as Section 16-45.02. Amended September 12, 1999]

Section 16-45.05 Responsibilities and Duties.

(A) It shall be the responsibility and duty of the Architectural Review Commission:

(1) To make recommendations upon any item referred to the Commission by the Board of Commissioners, Planning Board, Board of Adjustment, Appearance Commission or Zoning Administrator.

(2) To initiate, promote and assist in the implementation of standards and policies of design for the Town, any portion or neighborhood thereof, or any project to be undertaken. Provided, however, such standards and policies shall not be applicable to single family dwellings.

(3) To prepare both general and specific plans for the improved architectural appearance of the Town.

(4) To take any other action authorized by this Chapter or any other ordinance or resolution adopted by the Board of Commissioners.

(B) The following specific duties are hereby conferred upon the Architectural Review Commission:

(1) To draft a set of regulations and guidelines pertaining to design standards and criteria for new construction and exterior changes to existing structures. Such design standards and criteria shall include, but shall not be limited to, guidelines pertaining to types of building materials used, paint color, site location of any structures, drives and parking area, preservation of historical interest of neighborhood, landscaping requirements, or any other aspects of the construction process that may have an impact on whether the design of the proposed structure shall be compatible with or in harmony with existing structures in the area and/or any general or specific plans for the improved appearance of the Town.

(2) To review building plans as well as permit applications referred to the Architectural Review Commission and make recommendations regarding suitability and compliance with the regulations and guidelines of the Commission to the appropriate agency or to the Planning Board, Board of Adjustment or Board of Commissioners. All plans shall be reviewed by the Commission in a prompt and expeditious manner, and all recommendations of the Commission shall be made in writing. Copies shall be transmitted promptly to the appropriate Town Board and to the appropriate agency. Provided, however, such design standards and criteria shall not be applicable to single family dwellings.

(3) To enforce the provisions of this Chapter where such authority is granted to the Commission.

(4) 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 Commission, serve to enhance the appearance of the Town, preserve the natural beauty of the Town, and encourage highest and best development of property in the Town.

[Note: This Section was previously numbered as Section 16-45.03. Amended September 12, 1999]

Section 16-45.06 Appeals from Decisions by the Architectural Review Commission

The appeal of a decision by the Architectural Review Commission may be taken to the Board of Commissioners in accordance with Section 16-91.02.

[Amended September 12, 1999]

Section 16-45.07 Annual Report and Budget.

(A) In conjunction with submission of the budget request, the Commission 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 30 days after the close of the fiscal year.

(B) The Commission 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 projects which would advance the purposes and goals of the Commission. The requests will be reviewed and, if approved, recommended for inclusion in the proposed budget.

[Note: This Section was previously numbered as Section 16-45.04.]

Part VII. Conflicts of Interest

Section 16-45.10 Purpose

Service on a council, a board, or a commission of the Town of Blowing Rock is a public trust. Members of governmental boards have 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 board member shall use his or her position for private gain. Further, board members shall refrain from actions that might reasonably call into question the impartiality and the fairness of those decisions. To that end, this section establishes minimum standards that board members shall follow to avoid conflicts of interest in governmental decision making. It is the intention of the governing board that this ordinance be liberally

construed so as to accomplish its purpose of protecting the public against governmental decisions affected by undue conflicts of interest. *[Enacted July 13, 1999]*

Section 16-45.11 Applicability

(A) This section shall apply to the citizen members of all "boards" of the Town of Blowing Rock. For purposes of this section, "boards" includes the Town Council/Board of Commissioners, the Planning Board, the Board of Adjustment, the Appearance Commission, and the Architectural Review Commission.

(B) This section shall apply to all board members serving on or after July 13, 1999.

[Enacted July 13, 1999]

Section 16-45.12 Participation in Decisions

(A) In order to preserve public confidence in the integrity of the governmental process, it shall be the duty of the member of every board covered by this section to avoid even the appearance of a conflict of interest. Therefore no such member shall vote on, discuss, debate, advocate, influence, or otherwise participate before the board on which he or she is a member in any matter that would substantially affect, directly or indirectly, his or her personal financial interests or the financial interests of a member of his or her household. This prohibition includes formal and informal consideration of the matter by the board, whether conducted in public or in private.

This provision does not prohibit participation in legislative and advisory decisions that will have a similar effect on all citizens of Blowing Rock or in which the financial interest is so insignificant or remote that it is unlikely to affect the member's official actions in any way.

(B) Regardless of whether a financial interest exists, no member may represent any other party as an advocate or agent on any matter being considered by the board on which he or she is a member.

[Enacted July 13, 1999]

Section 16-45.13 Quasi-Judicial Decisions

(A) Members of boards making quasi-judicial decisions shall disqualify themselves from any matter in which their impartiality might reasonably be questioned. Members shall therefore refrain from all participation in any matter in which they have any financial interest (direct or indirect), a personal bias or prejudice, or a personal or financial relationship with any of the parties or the parties' representatives.

(B) In order to ensure a fair and unbiased hearing on the record of all quasi-judicial matters, board members making quasi-judicial decisions shall refrain from discussion of such matters with the parties thereto other than through the formal hearing process.

[Enacted July 13, 1999]

Section 16-45.14 Legal Opinions and Disqualification

(A) 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.

(B) 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.

(C) 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.

[Enacted July 13, 1999]

Section 16-45.15 Enforcement

(A) 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.

(B) Any member who intentionally participates in a decision for which this section requires disqualification shall be guilty of a misdemeanor, punishable as provided in General Statutes Section 14-4.

[Enacted July 13, 1999]