

CHAPTER 16 - LAND USE ORDINANCE

Article IV - Permits and Final Plat Approval

Part I. Zoning, Special Use, and Conditional Use Permits

Section 16-46 Permits Required.

(A) Subject to Subsection (E) and Section 16-276 (Sign Permits), the use made of property may not be substantially changed (see Section 16-152), 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:

- (1) A zoning permit issued by the administrator;
- (2) A special use permit issued by the board of adjustment;
- (3) A conditional use permit issued by the board of commissioners.

For purposes of this Section, buildings or other substantial structures within the CB, GB, 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, or OI Districts shall require the issuance of a zoning permit by the administrator. *[Amended July 14, 1998]*

(B) Zoning permits, special use permits, conditional 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 16-64, all development shall occur strictly in accordance with such approved plans and applications.

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

(D) A zoning permit, conditional use 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.

Section 16-47 No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled.

Issuance of a conditional use, 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 16-53, 16-60, and 16-61, 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 conditional use or special use permit have been complied with.

Section 16-48 Who May Submit Permit Applications.

(A) Applications for zoning, special use, conditional 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. By way of illustration, 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).

(B) The administrator may require an applicant to submit evidence of his authority to submit the application in accordance with subsection (A) whenever there appears to be a reasonable basis for questioning this authority.

Section 16-49 Applications To Be Complete.

(A) All applications for zoning, special use, conditional use, or sign permits must be complete before the permit issuing authority is required to consider the application.

(B) Subject to subsection (C), 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.

(C) 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 VII.

(D) 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.

(E) 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 16-50 Staff Consultation Before Formal Application.

(A) To minimize development planning costs, avoid misunderstanding or misinterpretation, and ensure compliance with the requirements of this chapter, preapplication consultation between the developer and the administrator is encouraged or required as provided in this section.

(B) Before submitting an application for a conditional 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" = 100 feet). The sketch plan shall contain:

- (1) The name and address of the developer;
- (2) The proposed name and location of the subdivision;
- (3) The approximate total acreage of the proposed subdivision;
- (4) The tentative street and lot arrangement;
- (5) Topographic lines;
- (6) 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.

The administrator shall meet with the developer as soon as conveniently possible to review the sketch plan.

(C) 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 16-51 Staff Consultation After Application Submitted.

(A) Upon receipt of a formal application for a zoning, special use, or conditional use permit, or minor plat approval, the administrator shall review the application and confer with the applicant to ensure that he understands the administrator's interpretation of the applicable requirements of this chapter, that he has submitted all of the information that he intends to submit, and that the application represents precisely and completely what he proposes to do.

(B) If the application is for a special use or conditional use permit, the administrator shall place the application on the agenda of the appropriate board when the applicant indicates that the application is as

complete as he intends to make it. However, as provided in Section 16-56, if the administrator believes that the application is incomplete, he shall recommend to the appropriate board that the application be denied on that basis.

Section 16-52 Zoning Permits.

(A) A completed application form for a zoning permit shall be submitted to the administrator by filing a copy of the application with the administrator in the inspections department.

(B) If the permit is requested for a lot within the CB, GB, or OI District, the administrator may not issue the permit until the application has been referred to either the Appearance Commission or the Architectural Review Commission, depending upon the nature of the application request, and the Appearance Commission or Architectural Review Commission has been afforded a reasonable time to meet and confer with the developer on said application. *[Amended July 14, 1998]*

(C) The administrator shall issue the zoning permit unless he finds, after reviewing the application and consulting with the applicant as provided in Section 16-50, that:

- (1) The requested permit is not within his jurisdiction according to the *Table of Permissible Uses*; or
- (2) The application is incomplete; or
- (3) 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 16-53 Performance Bond 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 16-54 Special Use Permits and Conditional Use Permits.

(A) An application for a special use permit shall be submitted to the board of adjustment by filing a copy of the application with the administrator in the inspections department.

(B) An application for a conditional use permit shall be submitted to the board of commissioners by filing a copy of the application with the administrator in the inspections department.

(C) Subject to subsection (D), the board of adjustment or the board of commissioners, respectively, shall issue the requested permit unless it concludes, based upon the information submitted at the hearing, that the permit should be denied because:

(1) The requested permit is not within its jurisdiction according to the *Table of Permissible Uses*; or

(2) The application is incomplete; or

(3) If completed as proposed in the application, the development will not comply with one or more requirements of this chapter (not including those the applicant is not required to comply with under the circumstances specified in Article VIII, Nonconforming Situations); or

(D) Even if the permit issuing board finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:

(1) Will materially endanger the public health or safety; or

(2) Will substantially injure the value of adjoining or abutting property and such loss in property values is not outweighed by the benefit to the community from the proposed development; or

(3) Will not be in harmony with the area in which it is to be located; or

(4) Will not be in general conformity with the Master Plan or other plan officially adopted by the Board.

Section 16-55 Burden of Presenting Evidence; Burden of Persuasion.

(A) The burden of presenting a complete application (as described in Section 16-49) to the permit issuing board shall be upon the applicant. However, unless the board informs the applicant at the hearing in what way the application is incomplete and offers the applicant an opportunity to complete the application (either at that meeting or at a continuation hearing), the application shall be presumed to be complete.

(B) Once a completed application has been submitted, the burden of presenting evidence to the permit issuing board sufficient to lead it to conclude that the application should be denied for the reasons stated in Subsections 16-54(C)(1), 54(C)(3), or 54(D) shall be upon the party or parties urging this position, unless the information presented by the applicant in his application and at the public hearing is sufficient to justify a reasonable conclusion that a reason exists to so deny the application.

(C) The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this chapter remains at all times on the applicant. The burden of persuasion on the issue of whether the application should be turned down for any of the reasons set forth in Subsection 16-54(D) rests on the party or parties urging that the requested permit should be denied.

Section 16-56 Recommendations on Conditional and Special Use Permits.

(A) Before being presented to the permit issuing board, an application for a conditional or special use permit shall be referred to the planning board for action in accordance with this section. The permit issuing board may not hold a public hearing on a conditional or 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 permit issuing board may continue the public hearing to allow the planning board more time to consider or reconsider the application.

(B) 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 16-49 and other

requirements of this chapter, as well as any staff recommendations for additional requirements to be imposed by the permit issuing board. If the staff report proposes a finding or conclusion that the application fails to comply with Section 16-49 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.

(C) 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 subsection 16-22(E).]

(D) After reviewing the application, the planning board shall report to the permit issuing board 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 therefor.

(E) In response to the planning board's recommendations, the applicant may modify his application prior to submission to the permit issuing board, and the staff may likewise revise its recommendations.

(F) With respect to special or conditional use permit applications for lots within the CB or OI zoning districts the permit issuing board shall, and with respect to permit applications for lots in other zoning districts the permit issuing board may, refer such applications to the appearance commission for its recommendation. The permit issuing board may not issue a permit so referred until the appearance commission has been afforded a reasonable time to review the application and make its recommendations to the permit issuing board. *[Amended July 14, 1998]*

(G) With respect to Conditional Use Permit Applications for lots within the CB, GB, and OI Zoning Districts, the Board of Commissioners shall refer such applications to the Architectural Review Commission for its recommendation. Such referral shall be in addition to and in conjunction with referral to the Planning Board for action in accordance with Subsections (A) through (E) above, and the applicant, in response to the Architectural Review Commission's recommendations, may modify his application prior to submission to the Board of Commissioners. The Board of Commissioners may not issue a permit which has been referred to the Architectural Review Commission until said Commission has been afforded a reasonable time to review the application and make its recommendations to the Board of Commissioners. *[Amended November 15, 1988; July 14, 1998]*

Section 16-57 Board of Commissioners Action On Conditional Use Permits.

(A) In considering whether to approve an application for a conditional use permit, the Board of Commissioners shall proceed according to the following format:

(1) The Board shall consider whether the application is complete. If no member moves that the application be found incomplete (specifying either the particular type of information lacking or the particular requirement with respect to which the application is incomplete) then this shall be taken as an affirmative finding by the Board that the application is complete.

(2) The Board shall consider whether the application complies with all of the applicable requirements of this chapter. If a motion to this effect passes, the Board need not make further findings concerning such requirements. If such a motion fails or is not made, then a motion shall be made that the application be found not in compliance with one or more of the requirements of this chapter. Such a motion shall specify the particular requirements the application fails to meet. Separate votes may be taken with respect to each requirement not met by the application. It shall be conclusively presumed

that the application complies with all requirements not found by the Board to be unsatisfied through this process.

(3) If the Board concludes that the application fails to comply with one or more requirements of this chapter, the application shall be denied. If the Board concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in Subsection 16-54(D). Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion.

Section 16-58 Board of Adjustment Action on Special Use Permits.

(A) In considering whether to approve an application for a special use permit, the board of adjustment shall proceed in the same manner as the Board when considering conditional use permit applications (Section 16-57), except that the format of the board of adjustment's proceedings will differ as a result of the four-fifths voting requirement set forth in subsection 16-32(A).

(1) The board shall consider whether the application is complete. If the board concludes that the application is incomplete and the applicant refuses to provide the necessary information, the application shall be denied. A motion to this effect shall specify either the particular type of information lacking or the particular requirement with respect to which the application is incomplete. A motion to this effect, concurred in by two members of the board, shall constitute the board's finding on this issue. If a motion to this effect is not made and concurred in by at least two members, this shall be taken as an affirmative finding by the board that the application is complete.

(2) The board shall consider whether the application complies with all of the applicable requirements of this ordinance. If a motion to this effect passes by the necessary four-fifths vote, the board need not make further findings concerning such requirements. If such a motion fails to receive the necessary four-fifths vote or is not made, then a motion shall be made that the application be found not in compliance with one or more requirements of this ordinance. Such a motion shall specify the particular requirements the application fails to meet. A separate vote may be taken with respect to each requirement not met by the application, and the vote of the two members in favor of such a motion shall be sufficient to constitute such motion a finding of the board. It shall be conclusively presumed that the application complies with all requirements not found by the board to be unsatisfied through this process. As provided in subsection 16-54(C), if the board concludes that the application fails to meet one or more of the requirements of this ordinance, the application shall be denied.

(3) If the board concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in Subsection 16-54(D). Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion. Since such a motion is not in favor of the applicant, it is carried by a simple majority vote.

Section 16-59 Additional Requirements on Special Use and Conditional Use Permits.

(A) Subject to subsection (B), in granting a special or conditional use permit, the board of adjustment or board of commissioners, respectively, may attach to the permit such reasonable requirements in addition to those specified in this chapter as will ensure that the development in its proposed location:

- (1) Will not endanger the public health or safety;
- (2) Will minimize any injury to the value of adjoining or abutting property;

(3) Will be in harmony with the area in which it is located; and

(4) Will be in conformity with the Town of Blowing Rock Master Plan, or other plan officially adopted by the Board.

(B) The permit issuing board may not attach additional conditions that modify or alter the specific requirements set forth in this ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.

(C) Without limiting the foregoing, the board may attach to a permit a condition limiting the permit to a specified duration.

(D) All additional conditions or requirements shall be entered on the permit.

(E) All additional conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirement of this chapter.

(F) A vote may be taken on application conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth in Subsection 16-54(C)(3) or 16-54(D). Conditions may be imposed by the board of adjustment (as well as the board of commissioners) by a simple majority vote.

Section 16-60 Authorizing Use, Occupancy, or Sale Before Completion of Development Under Special Use or Conditional Use Permits.

(A) In cases when, because of weather conditions or other factors beyond the control of the special use or conditional use 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 of the property or occupying any buildings or selling lots in a subdivision, the permit issuing board may authorize the commencement of 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).

(B) When the board imposes additional requirements upon the permit recipient in accordance with Section 16-59 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:

(1) A performance bond or other security satisfactory to the board is furnished;

(2) 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;

(3) The nature of the requirements or amenities is such that sufficient assurance of compliance is given by Section 16-114 (Penalties and Remedies For Violations) and Section 16-115 (Permit Revocation).

(C) 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 16-61 Completing Developments in Phases.

(A) If a development is constructed in phases or stages in accordance with this section, then, subject to subsection (C), the provisions of Section 16-47 (No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled) and Section 16-60 (exceptions to Section 16-47) shall apply to each phase as if it were the entire development.

(B) As a prerequisite to taking advantage of the provisions of subsection (A), 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.

(C) 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 his 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:

(1) If the improvement is one required by this chapter then the developer may utilize the provisions of subsections 16-60(A) or 16-60(C);

(2) 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 subsection 16-60(B).

Section 16-62 Expiration of Permits.

(A) Zoning, special use, conditional use, and sign permits shall expire automatically if, within one year after the issuance of such permits:

(1) 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

(2) 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 16-61), this requirement shall apply only to the first phase.

(B) 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 16-63.

(C) The permit issuing authority may extend for a period up to six months the date when a permit would otherwise expire pursuant to subsections (A) or (B) if it concludes that: (i) the permit has not yet expired; (ii) the permit recipient has proceeded with due diligence and in good faith; and (iii) 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.

(D) For purposes of this section, the permit within the jurisdiction of the board of commissioners or the board of adjustment is issued when such board votes to approve the application and issue the permit. A permit within the jurisdiction of the zoning administrator is issued when the earlier of the following takes place:

(1) 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

(2) The zoning 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 16-46(D).

(E) Notwithstanding any of the provisions of Article VIII (Nonconforming Situations), this section shall be applicable to permits issued prior to the date this section becomes effective.

Section 16-63 Effect of Permit on Successors and Assigns.

(A) Zoning, special use, conditional 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 continues to be used for the purposes for which the permit was granted, then:

(1) 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; and

(2) 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 and wish to use it for or in connection with purposes other than those for which the permit was originally issued, so long as the persons who subsequently obtain an interest in the property had actual or record notice [as provided in subsection (B)] of the existence of the permit at the time they acquired their interest.

(B) Whenever a zoning, special use or conditional 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 signs a written acknowledgment that the permit has been issued so that the permit may be recorded in the Watauga County or Caldwell County Registry, as applicable, and indexed under the record owner's name.

Section 16-64 Amendments to and Modifications of Permits.

(A) Insignificant deviations from the permit (including approved plans) issued by the board of commissioners, the board of adjustment, 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.

(B) 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.

(C) 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 or board of adjustment, new conditions may be imposed in accordance with Section 16-59, but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit.

(D) The administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in subsections (A), (B), and (C).

Section 16-65 Reconsideration of Board Action.

(A) Whenever (i) the board of commissioners disapproves a conditional use permit application, or (ii) the board of adjustment disapproves an application for a special use permit or 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 that:

- (1) Circumstances affecting the property that is the subject of the application have substantially changed; or
- (2) The application is changed in some substantial way; or
- (3) New information is available that could not with reasonable diligence have been presented at a previous hearing.

Section 16-66 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 16-67 Maintenance of Common Areas, Improvements, and Facilities.

The recipient of any zoning, special use, conditional use, or sign permit, or his 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 16-68 through 16-75 Reserved.

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Part II. Major and Minor Subdivisions

Section 16-76 Regulation of Subdivisions.

Major subdivisions are subject to a two step approval process. Physical improvements to the land to be subdivided are authorized by a conditional use permit as provided in Part I of Article IV of this chapter, and sale of lots is permitted after final plat approval as provided in Section 16-79. Minor subdivisions only require a one step approval process: final plat approval (in accordance with Section 16-78).

Section 16-77 No Subdivision Without Plat Approval.

(A) As provided in G.S. 160A-375, no person may subdivide his land except in accordance with all of the provisions of this chapter. In particular, no person may subdivide his land unless and until a final plat of the subdivision has been approved in accordance with the provisions of Section 16-78 or Section 16-79 and recorded in the Watauga County or Caldwell County Registry, as applicable.

(B) As provided in G.S. 160A-373, 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.

Section 16-78 Minor Subdivision Approval.

(A) The administrator shall approve or disapprove minor subdivision final plats in accordance with the provisions of this section.

(B) The applicant for minor subdivision plat approval, before complying with subsection (C), 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.

(C) Applicants for minor subdivision approval shall submit to the administrator a copy of a plat conforming to the requirements set forth in subsections 16-79(B) and (C) (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 16-80:

(1) *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.

Date

Owner

(2) *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.

Date	Administrator
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(3) A Certificate of Survey and Accuracy, in the form stated in subdivision 16-80(A)(3).

(D) The administrator shall take expeditious action on an application for minor subdivision plat approval as provided in Section 16-66. However, either the administrator or the applicant may at any time refer the application to the major subdivision approval process.

(E) 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.

(F) Subject to subsection (D), the administrator shall approve the proposed subdivision unless the subdivision is not a minor subdivision as defined in Section 16-15 or the application or the proposed subdivision fails to comply with subsection (E) or any other applicable requirement of this chapter.

(G) If the subdivision is disapproved, the administrator shall promptly furnish the applicant with a written statement of the reasons for disapproval.

(H) 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.

Section 16-79 Major Subdivision Approval Process.

(A) The board of commissioners shall approve or disapprove major subdivision final plats in accordance with the provisions of this section.

(B) 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.

(C) In addition to the appropriate endorsements, as provided in Section 16-80, the final plat shall contain the following information:

- (1) All of the information specified in G.S. 47-30 and G.S. 39-32.3;
- (2) 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;
- (3) The name of the subdivision owner or owners;
- (4) The township, county and state where the subdivision is located; and

(5) The name of the surveyor and his registration number and the date of the survey.

(D) The Board 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 conditional use permit that authorized the development of the subdivision.

(E) 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 conditional use permit applications. Following such hearing, the Board may reverse, modify, or affirm its earlier decision.

(F) 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.

Section 16-80 Endorsements on Major Subdivision Plats.

(A) All major subdivision plats shall contain the endorsements listed in subdivision (1), (2), and (3) herein. The endorsements listed in subdivision (4) shall appear on plats of all major subdivisions located outside the corporate limits of the town but within the planning jurisdiction.

(1) 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

(2) 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

(3) *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 _____, 19__.

Registered Land Surveyor

(4) *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. State Department of Transportation for acceptance of subdivision streets on the State highway system for maintenance.

District Engineer

Section 16-81 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.

Section 16-82 Protection Against Defects.

(A) Whenever (pursuant to Section 16-60) occupancy, use or sale is allowed before the completion of all facilities or improvements intended for dedication, then the performance bond or the surety that is posted pursuant to Section 16-60 shall guarantee that any defects in such improvements or facilities that appear within one year after the dedication of such facilities or improvements is accepted shall be corrected by the developer.

(B) Whenever all public facilities or improvements intended for dedication are installed before occupancy, use, or sale is authorized, then the developer shall post a performance bond or other sufficient surety to guarantee that he will correct all defects in such facilities or improvements that occur within one year after the offer of dedication of such facilities or improvements is accepted.

(C) 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.

(D) For purposes of this section, the term "defects" refers to any condition in publicly dedicated facilities or improvements that requires the town to make repairs in such facilities over and above the normal amount of maintenance that they would require. If such defects appear, the guaranty may be enforced

regardless of whether the facilities or improvements were constructed in accordance with the requirements of this chapter.

Section 16-83 Maintenance of Dedicated Areas Until Acceptance.

As provided in Section 16-67, 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.

Section 16-84 through 16-90 Reserved.