

Town of Blowing Rock

Planning Board

Agenda

Thursday, February 18, 2021

5:30 p.m.

Call to Order

Approval of Agenda

Approval of Minutes

Business

1. Review and consideration of Chapter 16 and Chapter 17 Amendments consistent with 160D of NC General Statutes

Other Business

Adjournment

DRAFT

Planning and Zoning Board

Minutes

Thursday, January 21, 2021

5:30 p.m.

The Blowing Rock Planning and Zoning Board met on Thursday, January 21, 2021 for their regularly scheduled meeting via Zoom. Chairman Gherini called the meeting to order at 5:30 pm. Members present were Harrison Herbst, Wes Carter, Mike Page, Pete Page, Bill McCarter, Joe Papa and Sam Glover. Member Kim Hartley was absent. Staff members present were Planning Director Kevin Rothrock and Planning and Zoning Support Specialist Tammy Bentley.

Chairman Gherini asked if there were any changes to the agenda. *Mr. Mike Page made a motion to approve the agenda, seconded by Mr. McCarter. All members were in favor of the motion.*

Chairman Gherini asked if there were any changes to the December 17, 2020 minutes. Mr. Mike Page noted, on the fourth page that Mr. McCarter is not revising NCGS 160D; that he is revising the Land Use Code to conform with NCGS 160D. *Mr. Mike Page made a motion to approve the minutes as amended, seconded by Mr. Pete Page. All members were in favor of the motion.*

1. CUP 2020-02 – Green Hill Subdivision

Mr. Rothrock presented the staff report and Powerpoint Presentation. John Winkler is requesting a conditional use permit for an 8-lot single-family subdivision and a new public street. The 4.715-acre subject property fronts Green Hill Rd and Hwy 321 and was formerly part of the old No. 6 hole at the Blowing Rock Golf Course. The property is zoned R-15, Single-family. The subject property is not in a water supply watershed. The property is in Watauga County and Caldwell County and further identified by NC PIN 2817-52-1239, 2817-42-9326, 2817-52-1317, and 2817-52-2501.

The subject property is mainly a field and was the old No. 6 hole at Blowing Rock Country Club. The larger extent of the subject property is 6 lots that is still owned by Blowing Rock Country Club. The applicant plans to recombine the current 6 lots into 5 lots with the largest lot of 4.7 acres being the proposed subdivision and proposed street.

Lot No. 8 fronts on Hwy 321, however, access will be through a driveway to the new street.

The proposed road access will connect to Green Hill Road just north of the intersection of Tarry Acres Circle. The road connection is situated at the apex of a curve that provides the most sight distance for both directions on Green Hill Road.

The new road as shown has a total length just over 400 feet to the center of the cul-de-sac. The road will be built to Town standards with a maximum grade of 15%, 18 feet of pavement, and 24-inch curb and gutter. The total width of the street from face of curb to face of curb is 21 feet. The applicant intends to offer the road for public dedication upon completion and the Town will be responsible for street maintenance and snow removal.

The remaining 4 lots will front Green Hill Road with three (3) of those lots relatively unchanged from their current configuration. Each lot meets the minimum size requirement of 15,000 sq feet and minimum lot width of 100 feet.

Storm water detention is required due to the increased impervious areas being generated by the proposed road. The storm water drainage system will be designed to accept runoff from the proposed roadway and convey it through a detention system before releasing to the NCDOT drainage easement and the creek below the property. As shown on the preliminary plan, it appears that the storm water design will meet the Land Use Code standards.

The proposed subdivision requires street trees be planted or retained an average of every 30 feet on each side of the street.

A 6-inch water line with two (2) hydrants along the new street is proposed. An additional hydrant is to be located at the south corner of Green Hill Road and the proposed street.

The proposed sewer will be a low-pressure sewer system and will connect to the gravity sewer main in Green Hill Road. Staff and the Town Engineer will approve water and sewer systems to meet the Town Code.

Staff also recommends a 20-foot rear/side setback and undisturbed buffer along the perimeter of lots 5, 6, and 8 where the subdivision backs up to existing homes. The current setback is 12 feet.

Chairman Gherini asked the source of the high-intensity light. Mr. Winkler deferred to Mr. Jason Gaston, Engineer. Mr. Gaston said the tree plan has the streetlight locations and these are the standard lights that already meet Town requirements. Mr. Rothrock said the Town is moving to LED lighting similar to what has been added along 321 and in town; that these are more of a pedestrian light than a streetlight.

Chairman Gherini asked the location of the buffers. Mr. Rothrock said on lots 5, 6 and 8 that the setback is currently 12', but staff recommends 20'.

Mr. Glover asked how lot 8 is accessed. Mr. Rothrock said via a driveway easement between lots 6 and 7, adding that a shared driveway between lots 6 and 7 makes more sense and that can be worked out in the subdivision plat.

Mr. McCarter asked if a non-access easement along 321 should be required. Mr. Rothrock said that driveway access off 321 is not reasonable.

Mr. Mike Page asked about the morning and evening traffic increase on Green Hill Road in the traffic study. Mr. Rothrock deferred to Mr. Gaston. Mr. Gaston said that the study shows 13 trips per hour during peak time, which is one trip every 4.5 minutes. Mr. Gaston said the average daily traffic will be lower. Mr. Rothrock asked if these numbers were based on the subdivision being fully built out. Mr. Gaston confirmed.

Mr. Mike Page noted that three of the lots are not included in the subdivision and are not part of the Boards consideration. Mr. Gaston confirmed.

Chairman Gherini asked Mr. Winkler if the infrastructure will be completed prior to selling the lots. Mr. Winkler confirmed and added that he may have to build a spec house or two; that the lots will be heavily restricted. Chairman Gherini asked if there will be a homeowners' association. Mr. Winkler said yes that the Town requires this. Mr. Rothrock confirmed. Mr. Rothrock said all infrastructure must be completed before the final plat can be recorded and then the lots can be sold.

Mr. Herbst asked if the covenants are recorded. Mr. Rothrock said the final plat is subject to the terms and conditions in the CUP and will be incorporated in the restrictive covenants.

Mr. Rothrock advised that properties within a 150' buffer of the subject properties generally have standing, that traditionally all parties are allowed to speak. Mr. Rothrock a list was generated as of 1 p.m. today and the people on the list can speak tonight.

Chairman Gherini advised that speakers have the floor for up to three minutes and asked a Board member to act as the time keeper. Mr. Herbst volunteered.

Ms. Caroline Howe spoke. Ms. Howe said her parents have lived at 239 Green Hill Road for 40 years and that she was raised in Blowing Rock. Ms. Howe said they are concerned with the impact on traffic, safety, the environment, and optics. Ms. Howe said that many people may not be aware of this hearing since it is being held in the dead of winter. Ms. Howe said 12 homes on five acres will wreck the environment and will mar the optics of this entrance to town. Ms. Howe said that this will eliminate the green space that she has known all her life.

Ms. Sandy Burkes-Campbell said it is hard to walk along Green Hill Road now and traffic is a big concern; that Green Hill Road is too small for twelve lots. Ms. Campbell said that Mr. Winkler has a subdivision on Rankin Road that is only five lots and asked if he could scale this down. She also asked if there is a way to slow this process down to allow all to participate.

Ms. Anne Bernhardt said she had no comments.

Mr. Alex Bernhardt said he had no comments.

Ms. Lee Harper Vason said she had lived here her entire life and that her parents had owned a house on old hole number six. Ms. Vason said she and Mr. Vason own property at Gideon Ridge and at the Village at Green Park. Ms. Vason said her concerns are the same as those addressed by Ms. Howe and Ms. Campbell. Ms. Vason said this would eliminate the green space on both sides of 321 here. Ms. Vason said the current buffer and plan may be in agreement with Blowing Rock and asked if this could be extended if this goes forward. Ms. Vason said that walking and driving on Green Hill Road is dangerous now and that they need a current average daily traffic study for Green Hill Road.

Ms. Betty Howe said she was not speaking.

Mr. Tom Medlin of 163 Gideon Ridge Road said he bought the property in November 2019. Mr. Medlin said his concern is what his view will be and traffic. Mr. Medlin asked Mr. Rothrock if duplexes will be allowed. Mr. Rothrock said only single-family residential will be allowed.

Mr. Medlin asked Mr. Winkler if he can add a square footage restriction in the restrictive covenants and he wants to hear more about those. Mr. Medlin said that the additional traffic at Green Hill Road and Rock Road on 321 will be dangerous, adding that there have been numerous accidents in this area. Mr. Medlin asked for support going forward and said he plans to speak with NCDOT regarding a warning light. Mr. Rothrock said that the Town cannot impose architectural design on one- and two-family dwellings, that Mr. Winkler can do that in private restrictions, but those are not enforced by the Town. Mr. Rothrock said changes to the intersection at Green Hill Road and Rock Road on 321 must go through NCDOT.

Mr. Glenn Sigmon of 267 Gideon Ridge Road asked if increased tourist traffic from the Blowing Rock attraction had been considered. Mr. Sigmon asked if the lower homes will have gravity sewer to avoid a lift station requiring blasting in the Yadkin River Headwaters. Mr. Sigmon asked Mr. Rothrock if this is in the Green Park Historic District. Mr. Rothrock confirmed and advised this is a national district with no review requirements. Mr. Sigmon wondered if this runs askew of the character of the area.

Mr. Rothrock advised that the traffic study is for the trips generated by the traffic entering and exiting the subdivision onto Green Hill Road. Mr. Rothrock advised that the sewer will be a low-pressure gravity system and asked Mr. Gaston to comment further. Mr. Gaston shared the sewer line will be a 2-inch forced main buried 3 feet deep, that it can be trenched and there will be no need to blast. Mr. Rothrock said there have been very few times that blasting has been required in Blowing Rock.

Mr. David Rogers had no questions.

Mr. Marshall Sealey had no questions.

Ms. Mary McLeod said she was representing her brother and sister. Ms. McLeod said her father, who passed away on January 5, 2021, owned 108 George Blagg Lane. Ms. McLeod said that the historic house has views on a dark night included lights from three towns. Ms. McLeod said she is concerned with light pollution and the building height of the proposed homes. Ms. McLeod said she can testify to the heavy traffic on Green Hill Road which was made worse when the Goforth Road access was closed.

Mr. Tim Gupton yielded his time.

Mr. Edgar Miller, Yadkin Riverkeeper Executive Director, said it is very fortunate that much of the headwater is protected by conservation lands. Mr. Miller referenced the urban legend of the headwaters coming out of the Green Park Inn parking lot, adding that there are many, many headwaters. Mr. Miller said he is more interested in potential impact. Mr. Miller said there are some tracts in the area that have been identified for conservation, adding that green space is at a premium and they would want to know that run off will be properly managed. Mr. Miller said that this particular sub-basin is ranked 121 out of 127 above High Rock Lake and the higher ranking means it is more pristine.

Mr. Rothrock advised that there will only be about four to five total streetlights. Mr. Rothrock also informed the Board that building height is limited to 35 feet from grade at the front door of the dwelling.

Ms. Pat Coley of 237 Green Hill Road said many of her concerns had been addressed. Ms. Coley said her father set up his medical practice in Lenoir due to the proximity to Blowing

Rock. Ms. Coley said they have lived here for 50 years and the Green Hill Road traffic is not a 'local occupant' problem, that the problem is other traffic. Ms. Coley said that large trucks are a problem, that the truck axle sign is missing and that the traffic is probably four times as much since the 2016 study.

Mr. Terry of 354 Green Hill Road asked the cost of the lots and estimated value of the houses. Mr. Winkler said the lots would be around \$200,000 to \$300,000 and the lots and homes together would be million-dollar homes. Mr. Terry noted that to be economically viable, the homes can't be inexpensive. Mr. Winkler agreed and added the lots can't be inexpensive either. Mr. Terry asked if restrictions would be in place and if the Town has restrictions as well. Mr. Rothrock replied that there are no restrictions on single-family residential.

Ms. Sandra Burkes-Campbell spoke for Ms. Sandra Leslie. She conveyed Ms. Leslie's concerns about traffic and that seasonal residents should be part of this process.

Ms. McDonald had no further comment as all her concerns had been addressed by others.

Mr. Bob Green said he heard the development will meet the criteria to have access to 321 from the bottom of the property and asked if there can be a restriction against that access. Mr. Green said this would add another dangerous intersection to the area. Mr. Rothrock replied that a condition prohibiting access to 321 could be added.

Ms. Susan Little was not able to join in.

Ms. Dinny Harper Addison said seasonal and summer owners are not able to give input which is unfortunate and needs to be rectified. Ms. Addison said the green space at the entrance is a terrible loss and wished the developer would give thought to a buffer and green space. Ms. Addison said she would love to talk with the developer to see if there is an alternate plan.

Mr. John Gaul was not on.

Chairman Gherini asked if Mr. Rothrock could reach out to people not present.

Mr. Zhang said he is new to Blowing Rock and he loves the natural beauty. Mr. Zhang said he is very concerned with similar developments and how long they project to take to complete. He also commented on the noise and construction traffic.

Ms. Lorrie Mulhern asked if she could speak and said she understood if she can't. Mr. Rothrock said that she was not on the list and she cannot speak, as its unfair to others who had signed up.

Mr. Rothrock stated that the developer has two years vested rights to start the road construction or the Conditional Use Permit will expire. Mr. Winkler said they will start immediately but they can't project the full build-out date.

Mr. Winkler said he has the Manor and Cottages on Main Street hotels in Blowing Rock and that he has done a lot of development in Boone. Mr. Winkler said he has a home on Rankin Road at the 7th hole on six acres. Mr. Winkler added that he thinks the lots will be bought by seasonal residents.

Mr. Gaston said there is only one zoning district that has less density than R-15 which is R-A, and that outside the watershed allows up to three units per acre. Mr. Gaston said they are proposing 1.86 units per acre, less than half of what is allowed. Mr. Gaston said per the Department of Environmental Quality, low density development is no more than 24% built upon, or no more than 2 units per acre. Mr. Gaston said they did not include Green Hill Road in the traffic study, that the traffic study shows increased traffic generated by the subdivision. Mr. Gaston said the storm water detention will comply with Town Code for subdivisions.

Mr. Winkler said that he took several photos of the site from 321 and the only time it will be seen is from Gideon Ridge. Mr. Gaston shared the photos and Mr. Winkler showed the visual impact from the site on 321 heading into Blowing Rock. Mr. Winkler said he is planning a buffer; that it will not be visible from 321 but he thinks it will be visible from Gideon Ridge.

Mr. John Gaul said that he is concerned with density and traffic on Green Hill Road. Mr. Gaul said that Green Hill Road is very curvy, narrow and that the houses are very close to the street. Mr. Gaul said the Town spends a fair amount of time repairing the road due to erosion caused by heavy traffic. Mr. Gaul said that Green Hill Road is a neighborhood road and a thoroughfare and that police have a time with speeders on the road.

*Mr. Herbst made a motion to close the public comment, seconded by Mr. Glover. **All members in favor of the motion.***

Mr. Rothrock advised that staff recommends a 20' buffer along the James, Little and McGuire properties and no access from the development to 321.

Chairman Gherini asked each Board member their thoughts.

Mr. Mike Page asked Mr. Rothrock if there are any plans to study traffic on Green Hill Road. Mr. Rothrock said not currently; that there was some discussion of an additional stop sign at Fairway 11 Court. Mr. Rothrock stated that per the BRPD there had been five traffic accidents on Green Hill Road in the last 20 years, four single vehicle accidents and one multi-vehicle accident. Mr. Page noted that the other Green Hill Road traffic is not before the Board tonight as part of this project. Mr. Page noted that the 2014 Comprehensive Plan noted that R-15 is designed for lower density. Mr. Rothrock commented that about 80% of the Town is zoned R-15 and R-A in the ETJ is also low density. Mr. Rothrock advised that most developable property is in a water supply watershed and this property is not. Mr. Page said that he shared the concern that the town remain as beautiful as possible. Mr. Page said he shares the concern of the green space as part of a conservation easement but realizes that the Board does not have the power to designate green space.

Mr. Pete Page said that the concerns are mostly traffic and the view across 321 and that he sees no reason not to recommend.

Mr. Papa said he walked the land and there is more space than appears. Mr. Papa asked Mr. Rothrock if there is any opportunity for short-term rentals. Mr. Rothrock said no. Mr. Papa said then he is good. Mr. Papa asked what county the property is situated in. Mr. Rothrock said both Caldwell and Watauga.

Mr. Glover asked if the Board could recommend a buffer along 321 as part of approval. Mr. Glover said he is not clear on the Yadkin River concern. Mr. Rothrock said that the Board can require as a recommendation some screening on the lower side of lots 4 and 7.

Mr. McCarter said he likes the buffer concept.

Mr. Herbst said the recommendation of a buffer along the 321 edge and along the Jaynes, McGuire and Little properties and no access to 321. Mr. Rothrock said the intent is to buffer at the upper edge of the permanent easement on lots 4 and 7.

Mr. Carter said he wants a buffer on the drainage easement as a condition. Mr. Carter asked Mr. Rothrock if there is anything that does not meet the existing Land Use Code. Mr. Rothrock said no. Mr. Carter asked if the low-pressure sewer system will have above ground pumps, boxes. Mr. Rothrock said no. Mr. Gaston said each house will have its own individual grinder pumps and added the stormwater detention will be in the cul-de-sac. Mr. Rothrock confirmed.

Mr. McCarter noted that the Land Use Code requires open space if more than 20 lots are being created. Mr. Rothrock confirmed.

Chairman Gherini said he agrees with Mr. Mike Page and it was very enlightening to hear from all the speakers. Chairman Gherini said he is a bit conflicted.

*Mr. Herbst made a motion to forward with the following conditions, no access to Highway 321, an evergreen buffer on lots 4 and 7, and the staff recommendation of an evergreen buffer along the Jaynes, McGuire and Little properties, seconded by Mr. McCarter. **All members, except Chairman Gherini, were in favor of the motion. Motion carried.***

Chairman thanked everyone for their time including Mr. Rothrock and Ms. Bentley.

Mr. Rothrock advised he will mail the public notices for the Town Council meeting in a couple of days and get the public notice in the paper.

Mr. Mike Page said, regarding seasonal residents, that The Blowing Rock Civic Association has those addresses. Mr. Page asked if there is anything the Board can do to help. Mr. Rothrock advised that having the meetings via Zoom has afforded the opportunity to many more participants than in the past. Mr. Rothrock also advised that the property was posted.

*Having no further business Mr. Mike Page made a motion to adjourn, seconded by Mr. Papa. **All members in favor of the motion.***

Chairman Gherini adjourned the meeting at 7:35 p.m.

Chairman Gherini

Tammy Bentley
Planning & Zoning Support Specialist

MEMO

TO: Chairman Pete Gherini and the Blowing Rock Planning Board

FROM: Kevin Rothrock, Planning Director

SUBJECT: General Statutes 160D – Updates to Land Use Ordinance (CH. 16) and Updates to Minimum Housing Ordinance (CH. 17)

DATE: February 12, 2021

In 2019, the NC General Assembly adopted sweeping changes for Land Use Law in North Carolina as a new chapter **160D** in the NC General Statutes. These statute changes require each local government in NC (city and county) to modify their land use regulations consistent with 160D. Due to the onset of the Coronavirus pandemic, the deadline to adopt changes to local ordinances was extended from January 1, 2021 to July 1, 2021.

Planning Board member Bill McCarter volunteered and provided an update to the entirety of Chapter 16 - Land Use Ordinance. Mr. McCarter also updated Chapter 17, the Town's minimum housing standards. The full ordinance revisions for Chapters 16 and 17 is attached for your review and consideration. Once approved by Planning Board, the entire revised text will be brought to Town Council for a public hearing.

The effective date for these new changes is upon adoption, but not later than July 1, 2021.

Other Amendments

Please also note a few other amendments proposed with the proposed draft of Chapter 16:

1. Allowing Single-family with accessory apartment uses in CB, TC, GB, and O-I districts to be permitted with a zoning permit rather than a special use permit. (See Table of Permissible Uses on page 10-7)
2. Removing the commercial design requirements for single-family uses and two-family uses which was prohibit by General Statutes a few year ago. (See Section 16-21.2 and 16-21.2.1 on page 21-1 and 21-2)

ATTACHMENTS

- G.S. Chapter 160D – Checklist of Changes to Local Ordinances – *Amendments in Red*
- BR Town Code – Chapter 16 – Land Use Ordinance - *Amendments in Red*
- BR Town Code - Chapter 17 – Minimum Housing Standards – *Amendments in Red*

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Article 1 – General Provisions

Section 16-1.2. Authority. This chapter is adopted pursuant to the authority contained in the town charter as well as the provisions of [Article 1 of Chapter 160D](#), ~~Article 19 of Chapter 160A~~, Article 21, Part 6 of Chapter 143, and Article 4 of Chapter 113A of the North Carolina General Statutes.

Section 16-1.3. Jurisdiction. This chapter shall be effective throughout the town's planning jurisdiction. The town's planning jurisdiction comprises the area within the corporate boundaries of the town as well as the area described in that ordinance adopted by the Board of Commissioners on January 8, 1985, entitled "An Ordinance Establishing The Town of Blowing Rock's Extraterritorial Planning Jurisdiction for The Purpose of Authorizing The Exercise of The Zoning and Other Regulatory Powers Permitted by [Article 1 of Chapter 160D](#) ~~19 of Chapter 160A~~ of the General Statutes", which ordinance is recorded in book 0002, page 234 of the Watauga County Registry and book 851, page 087 of the Caldwell County Registry. Such planning jurisdiction may be modified from time to time in accordance with [NCGS 160D-202](#) ~~Section 160A-360 of the North Carolina General Statutes~~. In addition to other locations required by law, a copy of a map showing the boundaries of the town's planning jurisdiction shall be available for public inspection in the [Planning &](#) Inspections Department.

Section 16-1.4. Effective Date. The provisions in this chapter were originally adopted and became effective on March 13, 1984.

Section 16-1.5. Relationship to Existing Land Use Code. To the extent that the provisions of this chapter are the same in substance as the previously adopted provisions that they replace in the Town's Land Use Code, they shall be considered as continuations thereof and not as new enactments unless otherwise specifically provided. In particular, a situation that did not constitute a lawful, nonconforming situation under the previously adopted zoning ordinance does not achieve lawful nonconforming status under this chapter merely by the repeal of the zoning ordinance.

Section 16-1.6 Relationship to Land Use Plan. It is the intention of the Board that this chapter implements the planning policies adopted by the Board for the town and its extraterritorial planning area, as reflected in the land use plan and other planning documents. While the Board reaffirms its commitment that this chapter and any amendment to it be in conformity with adopted planning policies, the Board hereby expresses its intent that neither this chapter nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document.

Section 16-1.7. No Use of Land or Buildings Except in Conformity with Chapter Provisions. Subject to Article III of this chapter (Nonconforming Situations), no person may use, occupy, or sell any land or buildings or authorize or permit the use, or sale of land or buildings under his/her control except in accordance with all of the applicable provisions of this chapter. For purposes of this section, the "use or occupation" of a building or land relates to anything and everything that is done to, on, or in that building or land.

Section 16-1.8. No Boundary Line Adjustments Except in Conformity with Chapter Provisions. No boundary of any lot may be adjusted, whether by subdivision, combination or recombination of previously platted lots, boundary line agreement, or any other legal method, except in conformance with the provisions of this Chapter. To assure that a proposed boundary line adjustment conforms to the

provisions of this Chapter, including, but not limited to, lot sizes, lot frontages, and building setbacks, the proposed adjustment shall be submitted to the Zoning Administrator for review and approval prior to execution.

The plan, plat, or survey depicting the proposed boundary line adjustment shall contain the following certificate:

Certificate of Approval

The proposed boundary line adjustment depicted herein is in conformance with the requirements of the Land Use Ordinance of the Town of Blowing Rock and is hereby approved.

Date

Administrator

Section 16-1.9. Fees. Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for zoning permits, sign permits, ~~conditional use permits~~, special use permits, subdivision plat approval, zoning amendments, variances and other administrative relief. The amount of the fees charged shall be as set forth in the town's budget or as established by resolution of the Board filed in the office of the Town Clerk. Fees established shall be paid upon submission of a signed application or notice of appeal.

Section 16-1.9.1. Any fee, or monetary contribution for development or a development approval not specifically authorized by law shall be returned, plus interest of six percent (6%) per annum, to the person who made the payment or as directed by a court if the person making the payment is no longer in existence. (NCGS 160D-106)

Article 2- Basic Definitions and Interpretations

Section 16-2.1. Word Interpretation. For the purpose of this Chapter, certain words shall be interpreted as follows:

- a) words in the present tense include the future tense.
- b) words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.
- c) word "person" includes a firm, association, corporation, trust, and company as well as an individual.
- d) the word "structure" shall include words, "plot," "parcel," or "tract."
- e) the word "lot" shall include the words "plot," "parcel," or "tract."
- f) the word "shall" is always mandatory and not merely directory.
- g) the word "will" is always mandatory and not merely directory.
- h) the words "used" or "occupied" include the words "intended, designed, or arranged to be used or occupied".

Section 16-2.2. General Definitions. Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this Chapter. Terms not herein defined shall have the meanings customarily assigned to them. Definitions relating to regulations associated with adult establishments, flood damage prevention, and watershed protection may be found in Section 16-2.3, 16-2.4 and 16-2.5, respectively.

Accessory Use. (See Section 16-10.6)

Acute Care. Short-term medical treatment, usually in a hospital, for patients having an acute illness or injury or recovering from surgery.

Administrative Decision. Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this Chapter.

Administrative Hearing. A proceeding to gather facts needed to make an administrative decision.

Administrator. The Planning Director for the Town of Blowing Rock or such other person that the Town Manager shall designate to administer the provisions of this chapter. Unless clearly indicated to the contrary the term shall apply to the administrator or his/her designee.

Adult Day Care. Adult day care offers support, services, and supervision to older, frail, or disabled adults who have difficulty taking care of themselves at home but wish to maintain their independence. Services may include an individual plan of care, skilled nursing care and health education, rehabilitation services, personal care and supervision, social services, recreational therapy, meals, and transportation.

Alternative Tower Structure. Man-made trees, clock towers, bell steeples, light poles and other similar mounting structures that camouflage or conceal the presence of antennas or towers.

Antenna. Any structure or device used to collect or radiate electromagnetic waves, including both directional antennas, such as panels, microwave dishes, and satellite dishes, and omnidirectional antennas, such as whips, but not including satellite earth stations. Antenna colors shall be light gray or other blending color as determined by the Administrator.

Assisted Living Unit. A unit occupied by an individual or individuals who are unable to live independently. The unit is part of a facility that provides indoor, conveniently located, shared food preparation service and major dining areas, and common recreation, social, and service facilities for the exclusive use of all residents.

Beacon. Any light with one or more beams directed into the atmosphere or directed at one or more points not on the same property as the light source. Also, any light with one or more beams that rotate or move.

Bed and Breakfast. A use meeting the following specifications:

- a) it consists of a single-family dwelling unit together with the rental of one or more, but not to exceed six (6), dwelling rooms on a daily or weekly basis to tourists, vacationers, or similar transients;
- b) meals, if provided are limited to the breakfast meal; and
- c) where the bed and breakfast operation is conducted primarily by persons who reside within the dwelling unit, with the assistance of not more than the equivalent of one full-time employee.

Bedroom. A fully enclosed interior room as shown on the building plan for the structure having, as a minimum, a doorway, window and closet.

Boarding House. A residential use consisting of at least one dwelling unit together with one or more rooms that are rented out or are designed or intended to be rented but which rooms, individually or collectively, do not constitute separate dwelling units. Notwithstanding the foregoing, the renting out of one or two rooms within a single-family residence may be regarded as an accessory use – see Section 16-20.13. A rooming house or boarding house is distinguished from a tourist home in that the former is designed to be occupied by longer-term residents (at least month-to-month tenants) as opposed to overnight or weekly guests.

Building. A structure used or intended for supporting or sheltering any use or occupancy. enclosed within exterior walls, whether portable or fixed, having a roof, the purpose of which is to shelter persons, animals, or property. ~~For the purposes of this Chapter, a parking deck shall be considered to be a building.~~

Building, Accessory. A minor building that is located on the same lot as a principal building and that is used incidentally to a principal building or that houses an accessory use.

Building Footprint. A building footprint is the outline of the total area of a lot or site that is surrounded by the exterior walls of a building or portion of a building and extended to include the area under all decks and porches, exclusive of courtyards. In the absence of surrounding exterior walls, the building footprint shall be the area under the horizontal projection of the roof and extended to include the area under all decks and porches. The footprint shall not include the area under an appendage such as an awning.

Building Frontage. The length of an outside building wall parallel to and visible from a public or private street right-of-way.

Building Height. The vertical distance measured from (1) the finished ground elevation that is adjacent to the main or primary entrance into said building or structure; to (2) the highest point of said building or structure. Similarly, the *eave height* of a building shall be the vertical distance measured from (1) the finished ground elevation that is adjacent to the main or primary entrance into said building; to (2) the lowest point of the eave above said entrance. (For building height for Town Center and Central Business – refer to Section 16-12.4.6. Please see Appendix B.

Building Marker. Any sign indicating the name of a building or date and incidental information about its construction, often cut into a masonry surface or made of bronze or other permanent material.

Building, Principal. The primary building on a lot or a building that houses a principal use.

Caliper. A nursery stock tree measured 6" above the ground or root ball.

Carry-out Restaurant. A place where meals or food products are prepared and served, to be eaten primarily off-premise.

Child Care Home. A home for not more than nine orphaned, abandoned, dependent, abused, or neglected children, together with not more than two adults who supervise such children, all of whom live together as a single housekeeping unit.

Child Care Institution. An institutional facility housing more than nine orphaned, abandoned, dependent, abused, or neglected children.

Circulation Area. That portion of the vehicle accommodation area used for access to parking or loading areas or other facilities on the lot. Essentially, driveways and other maneuvering areas (other than parking aisles) comprise the circulation area.

Collocation. Locating wireless communications equipment from more than one provider on a single site.

Combination Use. A use consisting of a combination on one lot of two or more principal uses separately listed in the Table of Permissible Uses, Section 16-10.1. (Under some circumstances, a second principal use may be regarded as accessory to the first, and thus a combination use is not established. See Section 16-10.6. In addition, when two or more separately owned or separately operated enterprises occupy the same lot, and all such enterprises fall within the same principal use classification, this shall not constitute a combination use.)

Conditional Zoning. A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

~~Conditional Use Permit.~~ ~~A permit issued by the Board of Commissioners that authorizes the recipient to make use of property in accordance with the requirements of this chapter as well as any additional requirements imposed by the Board.~~

Convenience Store. A one story, retail store containing less than 2000 square feet of gross floor area that is designed and stocked to sell primarily food, beverages, and other household supplies to customers who purchase only a relatively few items (in contrast to a "supermarket"). It is designed to attract and depends upon a large volume of "stop and go" traffic. Illustrative examples are "Fast Fare", "7-11" and "Pantry" chains.

Day Care Center. Any child-care arrangement that provides day care on a regular basis for more than four hours per day for more than five children of pre-school age.

Deck. A flat, floored, roofless area adjoining a building supported on at least two opposing sides by an adjoining structure and/or posts, piers, or other independent supports.

Developer. A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property. is responsible for any undertaking that requires a zoning permit, special use permit, conditional use permit, or sign permit.

Development. Unless the context clearly indicates otherwise, the term means any of the following:

- a) The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b) The excavation, grading, filling, clearing, or alteration of land.
- c) The subdivision of land as defined in NCGS 160D-802.
- d) The initiation or substantial change in the use of land or the intensity of use of land.

~~Any man-made use of, or change to, improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.~~

Development Approval. An administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, building permits, and plat approvals.

Development Regulation. A zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, stormwater control regulation, wireless telecommunication facility regulation, minimum housing code, State Building Code, or any other regulation adopted pursuant to NCGS 160D, or a local act or charter that regulates land use or development.

Diameter at Breast Height (dbh). The diameter of an existing tree measured 4.5 feet above grade.

Dimensional Nonconformity. A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

Disposal. As defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Driveway. That portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not part of the vehicle accommodation area. Driveways may serve as access from streets or private roads for single-family residences and may serve as access between parking areas.

Duplex. A two-family residence other than a two-family conversion.

Dwelling. Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of this chapter, the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.

Dwelling Unit. A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. ~~building containing sleeping, kitchen, and bathroom facilities designed for and used or held ready for use as a permanent residence by one family.~~

Effective Date of This Chapter. References to the effective date of this chapter shall be deemed to mean the effective date of any amendments to this chapter if the amendment, rather than this chapter as originally adopted, creates a nonconforming situation.

Evidentiary Hearing. A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation adopted under NCGS 160D.

Extraterritorial Jurisdiction. That portion of the town's planning jurisdiction that lies outside the corporate limits of the town.

Family. One or more persons living together as a single housekeeping unit.

Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. As used in this chapter, the term refers to that area designated as a floodway on the "Flood Boundary and Floodway Map" prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the inspections department.

Gross Floor Area. The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

Guyed Tower. A communication tower that is supported, in whole or in part, by guy wires and ground anchors.

Habitable Floor. Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or any combination thereof. A floor used only for storage is not a habitable floor.

Halfway House. A home for not more than nine persons who have demonstrated a tendency toward alcoholism, drug abuse, mental illness [as defined in NCGS 35-17(30)], or antisocial or criminal conduct, together with not more than two persons providing supervision and other services to such persons, all of whom live together as a single housekeeping unit.

Handicapped or Infirm Home. A residence within a single dwelling unit for at least six but not more than nine persons who are physically or mentally handicapped or infirm, together with not more than two persons providing care or assistance to such persons, all living together as a single housekeeping unit. Persons residing in such homes, including the aged and disabled, principally need residential care rather than medical treatment.

Handicapped or Infirm Institution. An institutional facility housing and providing care or assistance for more than nine persons who are physically or mentally handicapped or infirm. Persons residing in such homes, including the aged or disabled, principally need residential care rather than medical treatment.

High Volume Traffic Generation. All uses in the 2.000 classification other than low volume generation uses.

Historic Tree. A healthy tree with a dbh (diameter at breast height of 30”) or greater.

Home Health Care. Services provided to individuals who are restricted in their ability to leave home without assistance, due to illness or injury. Services may include, but are not necessarily limited to, skilled nursing, physical therapy, occupational therapy, speech therapy, personal hygiene, meal preparation, light housekeeping, etc.

Home Occupation. A commercial activity that:

- a) is conducted by a person on the same lot (in a residential district) where such person resides, and
- b) is not so insubstantial or incidental or is not so commonly associated with the residential use as to be regarded as an accessory use (see Section 16-10.6) but that can be conducted without any significantly adverse impact on the surrounding neighborhood. Without limiting the generality of the foregoing, a use may usually not be regarded as having an insignificantly adverse impact on the surrounding neighborhood if:
 - 1) goods, stock in trade, or other commodities are displayed;
 - 2) any on-premises retail sales occur; more than one person not a resident on the premises is employed in connection with the purported home occupation; or
 - 3) it creates objectionable noise, fumes, odor, dust or electrical interference; or
 - 4) more than twenty-five percent of the total gross floor area of residential buildings plus other buildings housing the purported home occupation, or more than 300 square feet of gross floor area (whichever is less), is used for home occupation purposes.

Hotels and Motels. A building or group of buildings wherein temporary lodging is provided on a regular basis to persons who seek to rent rooms or dwelling units on a day-to-day basis, except that the following are excluded from this definition:

- a) tourist homes;
- b) bed and breakfast establishments;
- c) single-family and two-family residences, regardless of the basis on which they are rented;
- d) multi-family residences, unless at least ten percent of the dwelling units within a multi-family development are regularly rented or offered for rent on a day -to-day basis.

Independent Living Unit. A unit providing a residential environment for ambulatory or disabled individuals at least fifty-five years of age who do not require health and support services located on the site, such as medical and nursing care, central dining, and transportation services. Each unit is a self-contained dwelling unit that is physically accessible to older or disabled persons.

Intermediate Care. Intermediate care is health-related care, outside of a conventional hospital, that is provided by supervised licensed personnel and does not require hospital or

skilled nursing care on a regular basis. It provides the opportunity to care for patients who do not need the facilities of high technology hospitals but are not capable of being cared for in their own homes without extensive support. It includes help with activities of daily living, including meals, dressing, personal hygiene, feeding, and medications.

Intermediate Care Home. A facility maintained for the purpose of providing accommodations for not more than seven occupants needing medical care and supervision at a lower level than that provided in a nursing care institution but at a higher level than that provided in institutions for the handicapped or infirm.

Intermediate Care Institution. An institutional facility maintained for the purpose of providing accommodations for more than seven persons needing medical care and supervision at a lower level than that provided in a nursing care institution but at a higher level than that provided in institutions for the handicapped or infirm.

Itinerant Merchant. A person, other than a merchant with an established retail store in the town, who transports an inventory of goods to a building, vacant lot, or other location in the town and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail.

Kenel. A commercial operation that:

- a) provides food and shelter and care of animals for purposes not primarily related to medical care (a kennel may or may not be run by or associated with a veterinarian); and/or
- b) engages in the breeding of animals for sale.

Lattice Tower. A guyed or self-supporting, open, steel frame structure, with three or more sides, that is used to support telecommunications equipment.

Legislative Decision. The adoption, amendment, or repeal of a regulation under NCGS 160D.

Legislative Hearing. A hearing to solicit public comment on a proposed legislative decision.

Loading and Unloading Area. That portion of the vehicle accommodation area used to satisfy the requirements of Section 16-20.13.

Lot. A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal entity for purposes of transfer of title.

Lot Area. The total area circumscribed by the boundaries of a lot, except that:

- a) when the legal instrument creating a lot shows the boundary of the lot extending to the center of a public street right-of-way or into a public street right-of-way, then the lot boundary for the purposes of computing the lot area shall be the street right-of-way line, or a line running parallel to and thirty feet from the center of the traveled portion of the street if the right-of-way line cannot be determined; and

- b) in a residential district, when a private road that serves more than three dwelling units is located along any lot boundary, then the lot boundary for purposes of computing the lot area shall be the inside boundary of the traveled portion of that road.

Low Volume Traffic Generation. Uses such as furniture stores, carpet stores, major appliance stores, etc. that sell items that are large and bulky, that need a relatively large amount of storage or display area for each unit offered for sale, and that therefore generate less customer traffic per square foot of floor space than stores selling smaller items.

Major Mountain Ridge. A ridge with an elevation higher than 3,000 feet above mean sea level and an elevation of 500 feet or more above the elevation of an adjacent valley floor.

Mobile Home. Any structure that:

- a) consists of a single unit completely assembled at the factory, or of two (double-wide) or three (triple-wide) principal components totally assembled at the factory and joined together at the site;
- b) is designed so that the total structure (or in the case of double-wide or triple-wide, each component thereof) can be transported on its own chassis;
- c) is over 32 feet in length and over 8 feet in width;
- d) is designed to be used as a dwelling and provides complete, independent living facilities for one family including permanent provisions for living, sleeping, eating, cooking, and sanitation;
- e) is actually being used or held ready for use as a dwelling;
- f) is not constructed in accordance with the standards set forth in the North Carolina State Building Code.

~~**Mobile Home, Class A.** A mobile home constructed after July 1, 1976 that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction and that satisfies the following additional criteria:~~

- ~~a) The mobile home has a length not exceeding four times its width;~~
- ~~b) The pitch of the mobile home's roof has a minimum vertical rise of one foot for each five feet of horizontal run;~~
- ~~c) The exterior materials are of wood, hardboard, or aluminum comparable in composition, appearance, and durability to site-built houses in the vicinity;~~
- ~~d) A continuous, permanent masonry foundation, unpierced except for required ventilation and access, is installed under the mobile home; and~~
- ~~e) The tongue, axles, transporting lights, and removable towing apparatus are to be removed subsequent to final placement.~~

Manufactured Mobile Home, Class B. A dwelling mobile home constructed after July 1, 1976 that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction ~~but that does not satisfy the criteria necessary to qualify the house as a class A mobile home, as defined in NCGS 143-145(7).~~

Mobile Home, Class C. Any mobile home that does not meet the definitional criteria of a class A or class B mobile home.

Mobile Home Park. A multifamily residential use consisting of two or more detached mobile homes located on one lot.

Modular Home. A single-family residence constructed in accordance with the standards set forth in the North Carolina Building Code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Among other possibilities, a modular home may consist of two sections transported to the site in a manner similar to a mobile home (except that the modular home meets the North Carolina Building Code), or a series of panels or room sections transported on a truck and erected or joined together on the site and comply with the design standards set forth in NCGS 143-139.1.

Monopole Tower. A communication tower consisting of a single pole, constructed without guy wires and ground anchors.

Multifamily Conversion. A multifamily residence containing not more than four dwelling units resulting from the conversion of a single building containing at least 2000 square feet of gross floor area that was in existence on the effective date of this Chapter and that was originally designed, constructed and occupied as a single-family residence.

Nature Blending Colors. Those colors approved and on file in the Planning and Inspections Office as being appropriate for the mountain resort setting of Blowing Rock.

Newsrack. Any individual self-service or coin-operated box, container, storage unit or other dispenser, installed, used or maintained for the display, distribution or sale of any written or printed material, including but not limited to, newspapers, news periodicals, magazines, books, pictures, photographs, advertising circulars, and records (hereinafter collectively referred to as “newsrack material”).

Newsrack, Modular. A grouping of several newsrack containers, that have the appearance of one unified newsrack of the same color, style, and design, generally provided by a modular newsrack distributor.

Nonconforming Project. Any structure, development, or undertaking that is incomplete on the effective date of this chapter and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

Nonconforming Situation. A situation that occurs when, on the effective date of this chapter, any existing lot or structure or use of an existing lot or structure does not conform to one or

more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because:

- a) a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations; or
- b) because the relationship between existing buildings and the land (in such matters as density and set-back requirements) is not in conformity with this chapter; or
- c) because land or buildings are used for purposes made unlawful by this chapter.

Nonconforming Use. A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. (For example, a commercial office building in a residential district may be a nonconforming use.) The term also refers to the activity that constitutes the use made of the property. (For example, all the activity associated with operating a retail clothing store in a residentially zoned area is a nonconforming use.)

Nursing Care Home. A facility maintained for the purpose of providing skilled nursing care and medical supervision at a lower level than that available in a hospital to not more than nine persons.

Nursing Care Institution. An institutional facility maintained for the purpose of providing skilled nursing care and medical supervision at a lower level than that available in a hospital to more than nine persons.

Overlay District. A zoning district, as established in Section 16-9.3, which is applied only in conjunction with an underlying, general use zoning district and which may grant additional use or development requirements upon the underlying zoning district. The effect is for both the overlay district and the underlying zoning district to control the use and development of a lot. In the event of a conflict between the regulations of the overlay district and the underlying zoning district, the regulations of the overlay district shall prevail, regardless of whether they are stricter or less strict than the regulations of the underlying district.

Parapet. The extension of a false front or a false wall above the roofline.

Parking Area Aisles. A portion of the vehicle accommodation area consisting of lanes providing access to parking spaces.

Parking Space. A portion of the vehicle accommodation area set aside for the parking of one vehicle.

Patio. A hard-surfaced recreation area that adjoins a building and is often adapted for dining.

Planning jurisdiction. The geographic area defined in Section 16-3 within the town limits as well as the area beyond the city limits within which the town may undertake planning and apply the development regulations authorized by NCGS 160D. ~~is authorized to plan for and regulate development, as set forth in Section 16-3.~~

Planned Unit Development. A development constructed on a tract of at least five (5) acres under single ownership, planned and developed as an integral unit, and consisting of a combination of principal uses that could not be combined in any district other than a planned unit development district.

Porch. A covered area adjoining an entrance to a building and usually having a separate roof.

Public Water Supply System. Any water supply system furnishing potable water to ten or more dwelling units or businesses or any combination thereof. (See NCGS 130A-311.)

Quasi-judicial Decision. A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations.

Receive-Only Earth Station. An antenna and attendant processing equipment for reception of electronic signals from satellites.

Residence, Multi-Family. A residential use consisting of two dwelling units located in separate buildings on the same lot or three or more dwelling units located in one or more buildings on the same lot.

Residence, Single-Family. A residential use consisting of a building containing one dwelling unit on a single lot.

Residence, Single-Family with Accessory Apartment. A residential use having the external appearance of a single-family residence, but in which there is located a second dwelling unit that comprises not more than twenty-five percent of the gross floor area of the building nor more than a total of 750 square feet.

Residence, Two-Family. A residential use consisting of two dwelling units within a single building on a single lot other than a single-family residence with accessory apartment. Two dwelling units that are connected only by structural components designed to form a passageway (e.g., a covered walkway) rather than a place of occupancy (e.g., porch or garage) shall not be regarded as a two-family residence.

Restaurant. A place where meals or food products are prepared, served, and eaten.

Road. All private ways used to provide motor vehicle access to (i) three or more lots or (ii) two or more distinct areas or buildings in unsubdivided developments.

Roof Line. The top edge of a roof or building parapet, which ever is higher, excluding any cupolas, pylons, chimneys, or minor projections.

Rooming House. (See Boarding House)

Setback. The distance from the property line to the nearest part of the applicable building, structure, or sign, measured perpendicularly to the property line.

Shared Driveway. A driveway shared between two single-family zoning lots. See Section 16-20.6.

Shopping Center. A building or group of buildings, either connected or free-standing, under unified ownership of land parcels, that is designed and has been approved by the Town Council as a shopping center with common parking, pedestrian movement, ingress, and egress, and is used or is intended to be used primarily for the retail sale of goods and services to the public.

Short-Term Rental of a Dwelling Unit. The rental, lease, or use of an attached or detached residential dwelling unit for a duration that is less than 28 consecutive days. Short-term rental use does not include rooming houses, boarding houses, or bed and breakfast establishments, which are specifically addressed as separate uses within the Table of Permissible Uses.

Sign. Any object, device, display, or structure that uses any color, form, graphic, illumination, symbol, or writing to advertise, to call attention to, to announce or identify the purpose of any person, place, or entity, or to communicate information of any kind to the public. Any flag, streamer, pole, or architectural device shall be construed a sign when it is intended to draw attention to or announce or identify an enterprise.

Sign, Area. The surface area of a sign shall be computed by means of the smallest square, circle, rectangle, triangle, or combination thereof that will enclose the writing, graphic, emblem, or other display on the face of the sign. The sign area shall include any material or color that is an essential part of the background of the display or that is used to differentiate the sign from the wall, structure, or backdrop against which the sign is placed. The sign area shall not include any supporting framework, bracing, decorative fencing, or wall that otherwise meets the zoning and building regulations and is clearly incidental to the display itself.

Sign, Abandoned. A sign, other than a billboard, that advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted. A sign that advertises a business, enterprise, or other activity that is closed for the off-season, not to exceed 270 consecutive days, shall not be considered an abandoned sign.

Sign, Animated. Any sign that uses movement, change of lighting, or other means to depict action or create a special effect.

Sign, Awning or Canopy. Any sign that is a part of or attached to an awning, canopy, or other structural protective covering above a door, entrance, window, or walkway.

Sign, Backlighting or Backlit. Illumination of a sign in which lights are placed within or behind raised opaque letters, thereby casting light upon the background of the letters rather than through the letters.

Sign, Banner. A sign made of fabric or any non-rigid material with no enclosing framework. National, state, or municipal flags shall not be considered banners.

Sign, Billboard. An off-premises sign owned by a person, corporation, or other entity that engages in the business of selling the advertising space on that sign.

Sign, Commercial Message. Any sign, wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity.

Sign, Flag. Any fabric, banner, or bunting containing distinctive colors, patterns, or symbols.

Sign, Freestanding. A sign that is attached to, erected on, or supported by a structure (such as a pole, column, mast, frame, or other structure) that is not itself an integral part of or attached to a building or other structure whose principal function is something other than the support of a sign. If the message is removed from a structure that was originally designed and used as a freestanding sign, this structure shall still be considered a sign. Freestanding signs, as used in this Chapter, shall include the following:

- a) Ground-mounted Sign. A freestanding sign, supported by a contiguous structural base or planter box that is permanently affixed to the ground, shall be considered a ground-mounted sign.
- b) Column Sign. A sign supported by one or more columns or poles or other similar support.

Sign, Height. The distance between the average grade of the land beneath the sign and the top of the highest attached component of the sign.

Sign, Illegal. A sign that did not meet the applicable sign restrictions and regulations at the time that it was erected, does not meet the current sign restrictions and regulations, and does not qualify as a nonconforming sign.

Sign, Informational. Any sign that serves solely to provide direction or information to persons using the property, such as entrance/exit, parking, or telephone, and that does not include business names, brand names, or information regarding product lines.

Sign, Internally Illuminated. A sign where the source of the illumination is inside the sign and light emanates through the message of the sign, rather than being reflected off the surface of the sign from an external source. Without limiting the generality of the foregoing, signs that consist of or contain tubes that:

- a) are filled with neon or some other gas that glows when an electric current pass through it; and
- b) are intended to form or constitute all or part of the message of the sign, rather than merely providing illumination to other parts of the sign that contain the message, shall also be considered internally illuminated signs.

Sign, Nonconforming. A sign that, on the effective date of this chapter, does not conform to one or more of the regulations set forth in this chapter, particularly Article 17- Signs.

Sign, Pennant. Any lightweight plastic, fabric, or other material, whether containing a message of any kind, suspended from a rope, wire, or string, usually in series, and designed to move in the wind.

Sign Permit. A permit issued by the land use administrator that authorizes the recipient to erect, move, enlarge, or substantially alter a sign.

Sign, Political. A sign that announces the candidacy of a person or slate of persons running for elective office, or a political party, or an issue.

Sign, Portable. Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported. Includes, but is not limited to, signs designed to be transported by means of wheels, runners, castors, trailers, or other mobile devices; signs converted to A-frames or T-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is regularly and customarily used in the normal day-to-day operations of the business.

Sign, Maintenance. For the purposes of this Chapter, the cleaning, painting, repair, or replacement of defective parts of a sign in a manner that does not alter the basic copy, design, or structure of the sign.

Sign, Major Renovation. Work to restore or repair a structure estimated to cost more than twenty-five percent of the appraised valuation of that structure.

Sign, Message Board. A sign or portion thereof with characters, letters, or illustrations that can be changed or rearranged without altering the face or the surface of the sign. A sign on which the only copy that changes is an electronic or mechanical indication of time or temperature shall be considered a “time and temperature” portion of a sign and not a message board sign for purposes of this Chapter.

Sign, Off-Premises. A sign that communicates a commercial message about a business, service, commodity, accommodation, attraction, or other enterprise or activity that exists, or is conducted, sold, offered, maintained, or provided at a location other than the premises where the sign is located.

Sign, On-Premises. A sign that draws attention to or communicates information about a business, service, commodity, accommodation, attraction, enterprise, or activity that exists or is conducted, sold, offered, maintained, or provided on the premises where the sign is located.

Sign, Projecting. Any sign affixed to a building or wall in such a manner that its leading edge extends more than six inches beyond the surface of such building or wall. A projecting sign is affixed to the building or wall so that it is perpendicular to such building or wall.

Sign, Roof. Any sign erected, constructed, or maintained upon or over the roof of a building, or extending above the highest wall of the building, and having its principal support on the roof or walls of the building.

Sign, Streamer. A long, narrow, ribbon-shaped flag or pennant.

Sign, Structure. Any structure that is built to support, supports, or has supported a sign.

Sign, Subdivision. A sign identifying a recognized subdivision, condominium complex, or residential development.

Sign, Temporary. A Temporary Sign shall be defined as one which is designed and installed in a manner that makes it easily removable from its location of installation.

Sign, Wall. Any sign attached to or erected against or within the wall of a building or structure, having the exposed face of the sign in a plane parallel to the plane of such wall.

Sign, Window. Any sign, pictures, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, sale, or service, that is placed inside a window, or upon the windowpanes or glass, and is visible from the exterior of the window. For the purposes of this Chapter a sign that rests against a window, a sign that is separated from the window by a bumper pad, or a sign that is placed within two inches of the window through the use of a hanging device, shall be considered a "window sign".

Sign, Value. The value for tax purposes of any sign so listed. If tax value is not available, the value shall mean the original cost of the sign. In the absence of information as to original cost submitted by the sign owner, the administrator shall estimate original cost based upon the best information reasonably available.

Significant Tree. A healthy tree with a DBH (diameter at breast height of 18") or greater.

Silviculture. The art and science of sustainably growing and harvesting trees to meet needs.

Skilled Nursing Care. Skilled care is professionally supervised nursing care and related medical and other health services for persons who are assessed as needing 24-hour nursing care that can only be met in a long-term care facility on an inpatient basis.

Sleeping Unit. A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Special Events. Circuses, fairs, carnivals, festivals, or other types of special events that:

- a) run for longer than one day, but not longer than two weeks;
- b) are intended to or likely to attract substantial crowds; and
- c) are unlike the customary or usual activities generally associated with the property where the special event is to be located.

Street. A public Town street or a street with respect to which an offer of dedication has been made and accepted by the Town.

Street, Arterial. A major street in the town's street system that serves as an avenue for the circulation of traffic onto, out, or around the town and carries high volumes of traffic.

Street, Collector. A street whose principal function is to carry traffic between minor, local, and sub-collector streets and arterial streets, but that may also provide direct access to abutting properties. It serves or is designed to serve, directly or indirectly, more than one hundred dwelling units and is designed to be used or is used to carry more than eight hundred trips per day.

Street, Cul-de-sac. A street that terminates in a vehicular turn-around.

Street, Local. A street whose sole function is to provide access to abutting properties. It serves or is designed to serve at least ten, but not more than twenty-five, dwelling units and is expected to or does handle between seventy-five and two hundred trips per day.

Street, Marginal Access. A street that is parallel to and adjacent to an arterial street and that is designed to provide access to abutting properties so that these properties are somewhat sheltered from the effects of the through traffic on the arterial street and so that the flow of traffic on the arterial street is not impeded by direct driveway access from a large number of abutting properties.

Street, Minor. A street whose sole function is to provide access to abutting properties. It serves or is designed to serve not more than nine dwelling units and is expected to or does handle up to seventy-five trips per day.

Street, Subcollector. A street whose principal function is to provide access to abutting properties but is also designed to be used or is used to connect minor and local streets with collector or arterial streets. Including residences indirectly served through connecting streets, it serves or is designed to serve at least twenty-six, but not more than one hundred, dwelling units and is expected to or does handle between two hundred and eight hundred trips per day.

Structure. Anything constructed or erected.

Subdivision. The division of a tract of land into two or more lots, building sites, or other divisions for the purpose of sale or building development, whether immediate or future, and including all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations of this chapter applicable strictly to subdivisions:

- a) the combination or recombination of portions of previously subdivided and recorded ~~platted~~ lots where the total number of lots is not increased and the resultant lots are equal to or exceed the minimum standards set forth in this chapter; or
- b) the division of land into parcels greater than ten (10) acres where no street right-of-way

dedication is involved; or

- c) the public acquisition by purchase of strips of land for widening or opening streets; or
- d) the division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the minimum standards set forth in this chapter; or
- e) the division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the NC General Statutes.

Subdivision, Architecturally Integrated. A subdivision in which all of the principal buildings are constructed in accordance with a master plan approved in conjunction with the permit that authorizes the development. All of the uses within such a development must be permissible within the district where this use is located.

Subdivision, Major. Any subdivision other than a minor subdivision.

Subdivision, Minor. A subdivision that does not involve any of the following:

- a) the creation of more than a total of three lots;
- b) the creation, dedication, or extension of any new street or road, whether public or private;
- c) the extension of a public water or sanitary sewer system other than laterals to individual lots; or
- d) the installation of drainage improvements that would require an easement across one or more lots to serve other lots. In stating that a minor subdivision does not involve the “creation, dedication, or extension of any new street or road”, it means that adequate access to such lots is provided by an approved existing street (public or private) without the need for additions or improvements to existing street rights-of-way or easements.

System Height. With regard to a wind energy system, the tower height plus the blade length.

Telecommunication Tower or Tower. A monopole, guyed, or self-supporting tower, constructed as a free-standing structure or in association with a building, other permanent structure, or equipment, that contains one or more antennas intended to transmit or receive television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication. This definition shall not include any structures erected solely for a non-commercial individual use such as residential television antennas, satellite dishes, and ham radio antennas.

Temporary Emergency, Construction, or Repair Residence. A residence (which may be a mobile home) that is:

- a) located on the same lot as a residence made uninhabitable by fire, flood, or other natural disaster and occupied by the persons displaced by such disaster; or

- b) located on the same lot as a residence that is under construction or undergoing substantial repairs or reconstruction and occupied by the persons intending to live in such permanent residence when the work is completed; or
- c) located on a nonresidential construction site and occupied by persons having construction or security responsibilities over such construction site.

Tower Height. The vertical distance measured from ground to the upper most point of the tower, not including the antenna(s). With regard to a wind energy system, the height above grade of the fixed portion of the tower, excluding the wind turbine itself.

Town. The Town of Blowing Rock, North Carolina.

Town Council. The Blowing Rock Board of Commissioners.

Town Manager. Chief Administrative Officer for the Town of Blowing Rock.

Townhouse. A unit in a non-vertically attached, multi-unit complex where the owner of the unit owns in severalty both the unit (including the entire physical structure) and the land on which the unit rests. The common areas are owned by the unit owners' association.

Townhouse development. A development of a zoning lot that consists of two (2) or more attached dwelling units or buildings and appurtenances, each of which is located on its own individual lot, plus land developed and designated for the common use and benefit of the occupants of the townhouse lots, provided an entity is designated to be legally responsible for maintenance and control of the common land areas. The individual lots within a townhouse development shall not be required to meet the building setback requirements, minimum lot sizes, or minimum lot widths as specified in Article 12, provided the overall zoning lot containing the townhouse development meets such standards.

Tract. (see definition for Lot). The term tract is used interchangeably with the term lot, particularly in the context of subdivisions, where one "tract" is subdivided into several "lots."

Transfer of Ownership or Control. Includes any of the following:

- a) the sale, lease, or sublease of the business; or
- b) the transfer of securities that constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- c) the establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Travel Trailer. A structure that is:

- a) intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle); and
- b) is designed for temporary use as sleeping quarters, but that does not satisfy one or more of the definitional criteria of a mobile home.

Tree-topping. The severe cutting back of limbs to stubs larger than 2 inches in diameter within the tree's crown to such a degree as to remove the normal canopy and disfigure the tree.

Turbine. The parts of the wind energy system including the blades, generator and tail.

Two-Family Conversion. A two-family residence resulting from the conversion of a single building containing at least 2000 square feet of gross floor area that was in existence on the effective date of this Chapter and that was originally designed, constructed and occupied as a single-family residence.

Unified Development. Development covering more than one tract, parcel, or lot, which has common ownership and is interrelated.

Use. The activity or function that actually takes place or is intended to take place on a lot.

Use, Principal. A use listed in the Table of Permissible Uses.

Utility Facilities. Any above-ground structures or facilities (other than buildings, unless such buildings are used as storage incidental to the operation of such structures or facilities) owned by a governmental entity, a nonprofit organization, corporation, or any entity defined as a public utility for any purpose by Section 62-3 of the North Carolina General Statutes and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, gas, oil, or electronic signals. Excepted from this definition are utility lines and supporting structures listed in Section 16-10.7.c.

Utility Facilities, Neighborhood. Utility facilities that are designed to serve the immediately surrounding neighborhood and that must, for reasons associated with the purpose of the utility in question, be located in or near the neighborhood where such facilities are proposed to be located.

Utility Facilities, Community or Regional. All utility facilities other than neighborhood facilities.

Variance. A grant of permission by the board of adjustment that authorizes the recipient to do that which, according to the strict letter of this Chapter, he/she could not otherwise legally do.

Vegetative Canopy. Trees that create a roof-like layer of spreading branches.

Vehicle Accommodation Area. That portion of a lot that is used by vehicles for access, circulation, parking, and loading and unloading. It comprises the total of circulation areas, loading and unloading areas, and parking areas (spaces and aisles).

Visible. Capable of being seen without visual aid by a person of normal visual acuity.

Viewshed. Those lands seen from a specific location that form a visual composition with foreground, middle ground, and background areas.

Wholesale Sales. On-premises sales of goods primarily to customers engaged in the business of reselling the goods.

Wind Energy System. A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics.

Wind Energy System, Small. A wind energy conversion system limited to generation of not more than 20 kW consisting of a wind turbine, a tower, and associated control or conversion electronics.

Wind Energy Tower. With regard to a wind energy system, the structure on which the wind system is mounted.

Zoning Administrator/Officer. (See Administrator)

Zoning Permit. A permit issued by the administrator that authorizes the recipient to make use of property in accordance with the requirements of this chapter.

Section 16-2.3. Adult Establishment Definitions.

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in Article 19. Such definitions shall not necessarily apply if this term is used elsewhere in this Chapter.

Adult Arcade. Any place to which the public is permitted or invited wherein coin-operated, slug-operated, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, anywhere the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

Adult Bookstore, Adult Novelty Store, or Adult Video Store. A commercial establishment that:

- a) receives a majority of its gross income during any calendar month from the sale or rental of publications, novelties, or devices that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas; or
- b) has as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications, novelties, or devices that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

Adult Business Establishment. Any business or enterprise that has, as one of its principal business purposes or as a significant portion of its business, an emphasis on matter and conduct depicting, describing or related to specified anatomical areas and specified sexual activities. This definition includes, but is not limited to, an adult arcade, adult bookstore,

adult novelty store, adult video store, adult cabaret, adult motel, adult mini motion picture theater, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center. This term may be used interchangeably with adult establishment or sexually oriented business.

Adult Cabaret. A nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- a) persons who appear in a state of nudity or semi-nudity; or
- b) live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- c) films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult Establishment. (See Adult Business Establishment).

Adult Live Entertainment. Any performance of or involving the actual presence of real people that exhibits specified sexual activities or specified anatomical areas.

Adult Live Entertainment Business. Any establishment or business wherein adult live entertainment is shown for observation by patrons.

Adult Mini Motion Picture Theater. An enclosed building with viewing booths designed to hold patrons that is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

Adult Motel. A hotel, motel or similar commercial establishment that:

- a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or
- b) offers a sleeping room for rent for a period of time that is less than 10 hours; or
- c) allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than 10 hours.

Adult Motion Picture Theater. A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of specified sexual activities or specified anatomical areas. Adult motion picture theater does not include any adult mini motion picture theater as defined in this section.

Adult Theater. A theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or semi-nudity, or live

performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities.

Employee. A person who performs any service on the premises of an adult business establishment on a full-time, part-time or contract basis, regardless of whether the person is designated as an employee, independent contractor, agent, or otherwise, or whether said person is paid a salary, wage or other compensation by the operator of said business. Also included are all persons who participate for consideration or possibility of a prize in any contests, performances, or exhibitions sponsored by or allowed at a adult business establishment or occurring upon the premises of the adult business establishment. Employee does not include a person exclusively on the premises for the repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

Escort. A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Escort Agency. A person or business association that furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

Erotic. Any seductive, titillating, lustful, immodest, indecent, suggestive, passionate, or similar reference, act, service, or deed.

Establish. Includes any of the following:

- a) the opening or commencement of any adult business establishment as a new business; or
- b) the conversion of an existing business, whether or not an adult business, to any adult business establishment; or
- c) the additions of any adult business establishment to any other existing adult business establishment; or
- d) the relocation of any adult business establishment.

Licensed Day Care Center. A facility licensed by the State of North Carolina, regardless of whether it is situated within the Town, that provides care, training, education, custody, treatment, or supervision for children for less than 24 hours per day, where such children are not related by blood, marriage, or adoption to the owner or operator of the facility, regardless of whether the facility is operated for a profit or charges for the services it offers.

Licensee. A person in whose name a license to operate an adult business establishment has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in an adult business establishment.

Massage. The manipulation of body muscular tissue by rubbing, stroking, kneading, or tapping, whether by hand or mechanical device.

Massage Business. Any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors.

Nude Model Studio. Any place where a person who appears semi-nude, in a state of nudity, or who displays specified anatomical areas and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a proprietary school licensed by the State of North Carolina or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

- a) that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- b) where in order to participate in a class a student must enroll at least three days in advance of the class; and
- c) where no more than one nude or semi-nude model is on the premises at any one time.

Nudity or State of Nudity. The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state

Person. An individual, proprietorship, partnership, corporation, association, or other legal entity.

Premises. The real property upon which the adult business establishment is located, including all appurtenances thereto and buildings thereon. It shall include, but not be limited to, the adult business establishment, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to this Chapter.

Publications. Includes, but is not necessarily limited to, books, magazines, other periodicals, videotapes, compact discs, or other photographic, electronic, magnetic, digital, or other imaging medium.

Semi-Nudity or in a Semi-Nude Condition. The showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

Sexual Encounter Center. A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- b) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

Sexually Oriented Business. Any business or enterprise that has, as one of its principal business purposes or as a significant portion of its business, an emphasis on matter and conduct depicting, describing or related to specified anatomical areas and specified sexual activities. This definition includes, but is not limited to, an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult mini motion picture theater, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center. This term may be used interchangeably with adult establishment or adult business.

Sexually Oriented Devices. Any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device.

Specified Anatomical Areas. Less than completely and opaquely covered:

- a) human genitals, pubic region, or buttock; or
- b) female breast below a point immediately above the top of the areola. Also includes human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified Criminal Activity. Any of the following offenses:

- a) prostitution or promotion of prostitution.
- b) dissemination of obscenity;
- c) sale, distribution or display of harmful material to a minor;
- d) sexual performance by a child;
- e) possession or distribution of child pornography;
- f) public lewdness;
- g) indecent exposure;
- h) indecency with a child;
- i) engaging in organized criminal activity;
- j) sexual assault;
- k) molestation of a child;
- l) gambling;
- m) distribution of a controlled substance; or
- n) any similar offenses to those described above under the criminal or penal code of other states or countries, For which:
 - 1) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction whichever is the later date, if the

conviction is of a misdemeanor offense;

- 2) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
- 3) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
- 4) the fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

Specified Sexual Activities. Includes any of the following:

- a) human genitals in a state of sexual stimulation or arousal; or
- b) acts of human masturbation, sexual intercourse or sodomy; or
- c) fondling or other erotic touching of human genitals, pubic regions, buttocks, or female breasts.

Section 16-2.4. Flood Plain Definitions.

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in Article 16. Such terms shall not necessarily apply when these terms are used elsewhere in this Chapter.

Accessory Structure (Appurtenant Structure). A structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms and may or may not be located on the same parcel as the farm dwelling or shop building.

Addition. (to an existing building.) An extension or increase in the floor area or height of a building or structure.

Appeal. A request for a review of the Floodplain Administrator's interpretation of any provision of this Chapter.

Area of Shallow Flooding. A designated Zone AO on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of Special Flood Hazard. see "Special Flood Hazard Area (SFHA)".

Base Flood. The flood having a one percent chance of being equaled or exceeded in any given year. Also known as the 100-year flood.

Base Flood Elevation (BFE). A determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a “Special Flood Hazard Area”, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

Basement. Any area of the building having its floor subgrade (below ground level) on all sides.

Building. Any structure used or intended for supporting or sheltering any use or occupancy. ~~A structure designed to be used as a place of occupancy, storage or shelter. For the purposes of this Chapter, a parking deck shall be considered to be a building.~~

Chemical Storage Facility. A building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Development. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Elevated Building. A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Encroachment. The advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing Manufactured Home Park or Manufactured Home Subdivision. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the floodplain management regulations adopted by the community.

Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- a) the overflow of inland or tidal waters; and/or
- b) the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Boundary and Floodway Map (FBFM). An official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

Flood Hazard Boundary Map (FHBM). An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

Flood Insurance. The insurance coverage provided under the National Flood Insurance Program.

Flood Insurance Rate Map (FIRM). An official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

Flood Insurance Study (FIS). An examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

Flood Prone Area. see "Floodplain".

Flood Zone. A geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

Floodplain. Any land area susceptible to being inundated by water from the base flood. As used in this chapter, the term refers to that area designated as subject to flooding from the base flood (one-hundred-year flood) on the "Flood Boundary and Floodway Map" prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the inspections department.

Floodplain Administrator. (see Administrator, Section 16-2.2)

Floodplain Development. Permit. Any type of permit that is required in conformance with the provisions of this Chapter, prior to the commencement of any development activity.

Floodplain Management. The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain Management Regulations. This Chapter and other zoning Chapters, subdivision regulations, building codes, health regulations, special purpose Chapters, and other applications of police power. This term describes Federal, State or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing. Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Flood or Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- a) the overflow of inland or tidal waters; and/or
- b) the unusual and rapid accumulation or runoff of surface waters from any source.

Freeboard. The height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The Base Flood Elevation (BFE) plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

Functionally Dependent Facility. A facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hazardous Waste Management Facility. As defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Highest Adjacent Grade (HAG). The highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

Historic Structure. Any structure that is:

- a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c) individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- d) certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program”.

Lowest Adjacent Grade (LAG). The elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

Lowest Floor. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter.

Manufactured Home. A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured Home Park or Subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market Value. The building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

Mean Sea Level. For purposes of this Chapter, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

New Construction. Structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

Nonconforming Building or Use. Any legally existing building or use which fails to comply with the provisions of the Chapter.

Non-Encroachment Area. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

Post-FIRM. Construction or other development for which the "start of construction" occurred on or after the effective date of the initial Flood Insurance Rate Map.

Pre-FIRM. Construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map.

Principally Above Ground. Fifty-one percent (51%) of the actual cash value of the structure is above ground.

Public Safety" and/or "Nuisance. Anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully

obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational Vehicle (RV). A vehicle, which is:

- a) built on a single chassis;
- b) 400 square feet or less when measured at the largest horizontal projection;
- c) designed to be self-propelled or permanently towable by a light duty truck; and
- d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Reference Level. The top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone A1-A30, AE, A, A99 or AO.

Regulatory Flood Protection Elevation. The “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas” where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus 1.0 feet of freeboard. In “Special Flood Hazard Areas” where no BFE has been established, this elevation shall be at least 2.0 feet above the highest adjacent grade.

Remedy a Violation. To bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the Chapter or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Riverine. Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Salvage Yard. Any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

Solid Waste Disposal Facility. Any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

Solid Waste Disposal Site. As defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

Special Flood Hazard Area (SFHA). The land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined Section 16-16.5 of this Chapter.

Start of Construction. Includes substantial improvement and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit

date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Structure. Anything constructed or erected; a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

Substantial Damage. Damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement. Any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- a) any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Variance. A grant of relief from the requirements of this Chapter.

Violation. The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation (WSE). The height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

Watercourse. A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Section 16-2.5. Watershed Definitions.

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in Article 14. Such terms shall not necessarily apply when these terms are used elsewhere in this Chapter.

Animal Unit. A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.

Best Management Practices (BMP). A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

Buffer within Watershed Area. An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

Built-upon area. Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas (for example, roads, parking lots, and paths), recreation areas (for example, tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious).

Cluster Development. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes non-residential development as well as single-family residential subdivisions and multi-family developments that do not involve the subdivision of land.

Composting Facility. A facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

Composting Facility. A facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

Critical Area. The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

Discharging Landfill. A landfill which discharges treated leachate, and which requires a National Pollution Discharge Elimination System (NPDES) permit.

Existing Development. Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this Chapter based on at least one of the following criteria:

- a) substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
- b) having an outstanding valid building permit as authorized by **NCGS 160D-108(d)(1)** ~~the General Statutes (G.S. 160A-385.1)~~, or
- c) having an approved site specific or phased development plan as authorized by the **NCGS 160D-108(d)(3)** ~~General Statutes (G.S. 160A-385.1)~~.

Existing Lot (Lot of Record). A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to September 14, 1993, the adoption of The Blowing Rock Watershed Protection Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior September 14, 1993, the adoption of The Blowing Rock Watershed Protection Ordinance.

Hazardous Material. Any substance listed as such in: SARA section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

Industrial Development. Any non-residential development that requires an NFDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

Nonconforming Lot. A lot described by a plat or a deed that was recorded prior to the effective date of this Chapter (or its amendments) that does not meet the minimum lot size or other development requirements of this Chapter.

Plat. A map or plan of a parcel of land which is to be or has been subdivided.

Protected Area. The area adjoining and upstream of the critical area of WS-IV watershed. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed; or within 10 miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

Residential Development. Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc., and customary home occupations.

Toxic Substance. Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food

chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

Water Dependent Structure. Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

Watershed. The entire land area contributing surface drainage to a specific point (e.g. the water supply intake).

Watershed Administrator. (see Administrator)

Watershed Variance, Major. A variance from the minimum statewide water supply watershed protection rules that results in:

- a) relaxation, by a factor of greater than ten (10) percent, of any management requirement that takes the form of a numerical standard under the low-density option;
- b) the relaxation of any management requirement that applies to a development proposal intended to qualify under the high-density option.

Watershed Variance, Minor. A variance from the minimum statewide watershed protection rules that results in a relaxation by a factor of up to ten (10) percent of any management requirement under the low-density option.

Article 3 - Administrative Mechanisms

Section 16-3.1. Planning Board.

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

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

16-3.1.1.1. All members appointed shall, before entering their duties, qualify by taking an oath of office as required by G.S. 153A-26 and G.S. 160A-61. (2019-111, s. 2.4.)

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

16-3.1.2.1. Since the board has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Articles 4, 5, and 6. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

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

16-3.1.2.3. Whenever the board is called upon to make recommendations concerning a ~~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 Section 16-3.1.5.7.

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

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

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

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

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

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

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

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

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

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

Section 16-3.2. Board of Adjustment. There shall be a Board of Adjustment consisting of six regular members and three alternates. The Blowing Rock Board of Commissioners shall appoint five regular members and three alternates, each of whom shall be residents of the Town. The Watauga County Board of Commissioners shall be entitled to appoint one regular member in the manner prescribed for appointments to the Planning Board in Section 16-3.1, above.

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

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

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

16-3.2.1.3. All members appointed shall, before entering their duties, qualify by taking an oath of office as required by G.S. 153A-26 and G.S. 160A-61. (2019-111, s. 2.4.)

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

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

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

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

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

16-3.2.4. Voting. The concurring vote of four-fifths of the Board of Adjustment (including alternates sitting in lieu of regular members) shall be necessary to grant a variance. A

majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this section, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculations of the requisite majority if there are no qualified alternates available to take the place of such members. The Board shall not hear a request for a variance or an appeal unless there are sufficient members present (including seated alternates) to decide the matter as specified herein.

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

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

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

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

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

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

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

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

Section 16-3.4. Board of Commissioners. The Board of Commissioners, in considering special conditional use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Articles 4 and 5 of this chapter. In considering proposed changes in the text of this chapter or in the zoning map, including the establishment of Conditional Districts, the Board acts in its legislative capacity and must proceed in accordance with the requirements of Article 23. Unless otherwise specifically provided in this chapter, in acting upon special 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.

Section 16-3.5. Conflicts of Interest. Service on a governing board, appointed board or administrative staff ~~a commission~~ of the Town of Blowing Rock is a public trust. Each person has ~~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 person board member shall use his or her position for private gain. The following conflict-of-interest standards are provided for the governing board, advisory boards, and administrative staff, in accordance with NCGS 160D-109. 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.

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

~~**Applicability.** 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. This section shall apply to all board members serving on or after July 13, 1999.~~

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

~~**Participation in Decisions.** 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. 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.~~

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

~~**Quasi-Judicial Decisions.** 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. 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.~~

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

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

16-3.6. Appearance Commission.

16-3.6.1. Membership and Vacancies. There shall be an appearance advisory commission consisting of nine (9) members, all of whom shall be ~~citizens and~~ residents of the planning and zoning jurisdiction of the town. Members shall be appointed by the board of commissioners for a term of three (3) 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 at least one member be a member of a design profession. A majority of members shall have special training or experience in a design field such as architecture, landscape design, horticulture, city planning, or related field.~~

16-3.6.1.1. Members 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.

16-3.6.1.2. 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.

16-3.6.1.3. All members appointed shall, before entering their duties, qualify by taking an oath of office as required by G.S. 153A-26 and G.S. 160A-61. (2019-111, s. 2.4.)

16-3.6.2. 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 meet as needed. All of its meetings shall be open to the public. For the purpose of taking any official action authorized or required by this article, there shall be present a quorum of five (5) members.

16-3.6.3. 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.
 - (8) To be the lead civic organization coordinating Spring and Fall Planting Days and the chief sponsor of the annual Town Clean-up Day.

16-3.6.4. 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 1 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.

16-3.6.5. 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.”

Article 4 - Permits and Final Plat Approval

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

- a) a zoning permit issued by the Administrator; or
- b) a ~~special conditional~~ use permit issued by the Board of Commissioners.

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

16-4.1.2. Zoning permits, ~~special 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 16-4.14, all development shall occur strictly in accordance with such approved plans and applications.

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

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

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

Section 16-4.2. No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled. Issuance of a special conditional use or zoning permit authorizes the recipient to commence the activity resulting in a change in use of the land or (subject to obtaining a building permit) to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures or to make necessary improvements to a subdivision. However, except as provided in Sections 16-4.8, and 16-4.12.1, the intended use may not be commenced, no building may be occupied, and in the case of subdivisions, no lots may be sold until all of the requirements of this chapter and all additional requirements imposed pursuant to the issuance of a special conditional use ~~or~~ permit have been complied with.

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

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

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

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

16.4.4.3. The presumption established by this chapter is that all of the information set forth in Appendix A is necessary to satisfy the requirements of this section. However, it is

recognized that each development is unique, and therefore the permit issuing authority may allow less information or require more information to be submitted according to the needs of the particular case. For applications submitted to the Board of Commissioners or Board of Adjustment, the applicant may rely in the first instance on the recommendations of the Administrator as to whether more or less information than that set forth in Appendix A should be submitted.

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

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

16-4.5.1. Before submitting an application for a ~~special 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 inch = 100 feet). The sketch plan shall contain:

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

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

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

Section 16-4.6. Staff Consultation After Application Submitted. Upon receipt of a formal application for a zoning, or ~~special conditional~~ use permit, or minor plat approval, the Administrator shall review the application and confer with the applicant to ensure that they

understand the Administrator's interpretation of the applicable requirements of this chapter, that they have submitted all of the information that they intend to submit, and that the application represents precisely and completely what they propose to do. If the application is for a special conditional use permit, the Administrator shall place the application on the agenda of the Board of Commissioners when the applicant indicates that the application is as complete as they intend to make it. However, as provided in Section 16-4.4, if the Administrator believes that the application is incomplete, he shall recommend to the Board that the application be denied on that basis.

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

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

Section 16-4.8. Performance Guarantee 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 16-4.9. Special Conditional Use Permits. An application for a special conditional Use permit shall be submitted to the Board of Commissioners by filing the application with the Administrator.

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

16-4.9.2. When presented to the Planning Board, the application shall be accompanied by a

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

16-4.9.3. The Planning Board shall consider the application and the attached staff report in a timely fashion, and may, in its discretion, hear from the applicant or members of the public. (Notice to the adjoining property owners is provided for in Section 16-3.1.2.3)

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

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

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

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

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

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

- a) The use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare.
- b) The use or development complies with all required regulations and standards of the Land

Use Ordinance or with variances thereto, if any, and with all other applicable regulations.

- c) The use or development is located, designed, and proposed to be operated so as to be compatible with the particular neighborhood in which it is to be located.
- d) The use or development will not substantially injure the value of adjoining or abutting property.
- e) The use or development conforms with the general plans for the physical development of the Town as embodied in this Ordinance, the Town of Blowing Rock Comprehensive Plan, and any other duly adopted plans of the Town.

The burden of establishing these findings of fact shall lie upon the applicant. In addressing the issue of compatibility, as required in paragraph (3), above, the applicant must demonstrate compatibility with the *particular* neighborhood in which the development or use is to be located. The fact that a use is authorized as a special conditional use within a zoning district classification shall not give rise to a presumption that such special conditional use is compatible with other uses authorized in the zoning district classification.

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

Section 16-4.12. ~~Authorizing Use, Occupancy, or Sale Before Completion of Development Performance Guarantee Under Special Conditional Use Permits.~~ In cases when, because of weather conditions or other factors beyond the control of the ~~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 or the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this chapter are concerned) if the permit recipient provides a performance bond, letter of credit or other security satisfactory to the board to ensure that all of these requirements will be fulfilled within a reasonable period (not to exceed twelve months).

16-4.12.1. When the Board of Commissioners imposes additional requirements upon the permit recipient in accordance with Section 16-4.11 or when the developer proposes in the plans submitted to install amenities beyond those required by this chapter, the Board may authorize the permittee to commence the intended use of the property or to occupy any building or to sell any subdivision lots before the additional requirements are fulfilled or the

amenities installed if it specifies a certain date by which or a schedule according to which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:

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

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

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

16-4.12.5. With respect to subdivisions in which the developer is selling only underdeveloped lots, the Board may authorize final plat approval and the sale of lots before all the requirements of this chapter are fulfilled if the subdivider provides a performance bond or other security satisfactory to the Board to ensure that all of these requirements will be fulfilled within not more than twelve months after final plat approval.

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

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

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

16-4.13.2. If a development that is to be built in phases or stages includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or tennis courts in a residential development) then, as part of 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:

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

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

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

- a) The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or
- b) Less than ten percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased development (see Section 16-4.13), this requirement shall apply only to the first phase.
- c) If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one year, then the permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 16-4.15.

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

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

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

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

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

Section 16-4.16. Notice of Permit to be Recorded. Whenever a zoning, or ~~special 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 has caused notice of such permit to be recorded in the Watauga County or Caldwell County Registry, as applicable, and indexed under the record owner's name.

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

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

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

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

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

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

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

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

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

Section 16-4.20. Maintenance of Common Areas, Improvements, and Facilities. The recipient of any zoning, special 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 16-4.21. Major and Minor Subdivisions. Major subdivisions are subject to a two-step approval process. Physical improvements to the land to be subdivided are authorized by a special conditional use permit as provided in Section 16-4.1 of this chapter, and sale of lots is permitted after final plat approval as provided in Section 16-4.21.3. Minor subdivisions only require a one-step approval process: final plat approval (in accordance with Section 16-4.21.2).

16-4.21.1. No Subdivision Without Plat Approval. As provided in NCGS 160D-807 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 16-4.21.3 or Section 16-4.21.3 and recorded in the Watauga County or Caldwell County Registry, as applicable. As provided in NCGS 160D-803 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.

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

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

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

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

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

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

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

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

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

a) *Certificate of Approval*

I hereby certify that all streets shown on this plat are within the Town of Blowing Rock's planning jurisdiction, all streets and other improvements shown on this plat have been installed or completed or that their installation or completion (within

twelve months after the date below) has been assured by the posting of a performance bond or other sufficient surety, and that the subdivision shown on this plat is in all respects in compliance with Chapter 16 of the Blowing Rock Town Code, and therefore this plat has been approved by the Blowing Rock Board of Commissioners, subject to its being recorded in the Watauga/Caldwell County Registry within 30 days of the date below.

Date Administrator

b) *Certificate of Ownership and Dedication*

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

Date Owner

Notarized

c) *Certificate of Survey and Accuracy*

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

Registered Land Surveyor

d) *Division of Highways District Engineer Certificate*

I hereby certify that the public streets shown on this plat have been completed, or that a performance bond or other sufficient surety has been posted to guarantee their

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CHAPTER 17 - MINIMUM HOUSING STANDARDS

Article I – Definitions

Section 17-1. Definitions.

The following terms shall have the meanings whenever used or referred to as indicated when used in this Part unless a different meaning clearly appears from the context:

Owner – The holder of the title in fee simple and every mortgagee of record.

Parties in Interest – All individuals, associations, and corporations who have interests of record in a dwelling and any who are in possession thereof.

Public Authority – Any officer who is in charge of any department or branch of the government of the town, county, or state relating to health, fire, building regulations, or other activities concerning dwellings in the local government.

Article II – Authority to Repair, Close, and Demolish Certain Dwellings

~~Section 17-2. Authority to Repair, Close, and Demolish Certain Dwellings Unfit for Human Habitation.~~

~~(A) The purpose of this Ordinance is to provide a means for the Town to determine that a dwelling within the Town Limits is unfit for human habitation if the officer in charge of administering this Ordinance determines that conditions exist in the dwelling that render it dangerous or injurious to the health, safety or morals of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the Town. Defective conditions may include defects herein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light or sanitary facilities; dilapidation; disrepair; structural defects; or uncleanness.~~

Section 17-2. Authorization.

17-2.1. Occupied Dwellings. The existence and occupation of dwellings that are unfit for human habitation are inimical to the welfare and dangerous and injurious to the health and safety of the people of the town. A public necessity exists for the repair, closing, or demolition of such dwellings. Whenever there exists in the planning jurisdiction, dwellings that are unfit for human habitation due to dilapidation; defects increasing the hazards of fire, accidents or other calamities; lack of ventilation, light, or sanitary facilities; or other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the residents of the local government, power is conferred upon the town to exercise its police powers to repair, close, or demolish the dwellings consistent with this Chapter.

17-2.2. Abandoned Structures. The town may by ordinance provide for the repair, closing, or demolition of any abandoned structure found to be a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children, or frequent use by vagrants as living quarters in

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the absence of sanitary facilities. The ordinance may provide for the repair, closing, or demolition of such structure pursuant to the same provisions and procedures as are prescribed by this Chapter for the repair, closing, or demolition of dwellings found to be unfit for human habitation. (2019-111, s. 2.4.)

Section 17-3. Ordinance authorized as to repair, closing, and demolition. Upon the adoption of an ordinance finding that dwelling conditions of the character described in this Chapter, the Board of Commissioners is authorized to adopt and enforce ordinances relating to dwellings within the planning jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

17-3.1. Designation of enforcement officer. ~~(B)~~ The Building Inspector for the Town of Blowing Rock is hereby designated and appointed to exercise the powers prescribed by this Chapter Ordinance.

17-3.2. Investigation, complaint, hearing. ~~(C)~~ That whenever a petition is filed with the Building Inspector by a public authority or by at least five residents of the Town charging that any dwelling is unfit for human habitation or whenever it appears to the Building Inspector (on his own motion) that any dwelling is unfit for human habitation, the Building Inspector shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Building Inspector (or his designated agent) at a place within the county in which the property is located fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Building Inspector.

17-3.3. Orders. ~~(D)~~ ~~That~~ If, after notice and hearing, the Building Inspector determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order:

17-3.3.1. ~~(i)~~ If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation. The ordinance may fix a certain percentage of this value as being reasonable. The order may require that the property be vacated and closed only if continued occupancy during the time allowed for repair will present a significant threat of bodily harm, taking into account the nature of the necessary repairs, alterations, or improvements; the current state of the property; and any additional risks due to the presence and capacity of minors under the age of 18 or occupants with physical or mental disabilities. The order shall state that the failure to make timely repairs as directed in the order shall make the dwelling subject to the issuance of an unfit order under Section 17-3.4.

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17-3.3.2. ~~(ii)~~ If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling requiring the owner, within the time specified in the order, to remove or demolish such dwelling. The ordinance may fix a certain percentage of this value as being reasonable. However, notwithstanding any other provision of law, if the dwelling is a contributing structure in a National Register District, after a public hearing as provided by ordinance, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with NCGS 160D-949.

17-3.4. Repair, closing, and posting. ~~(E) That,~~ If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the Building Inspector may cause the dwelling to be repaired, altered or improved or to be vacated and closed; that the Building Inspector may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: "This Building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful ." Occupation of a building so posted shall constitute a Class 1 misdemeanor. The duties of the public officer set forth in this section shall not be exercised until the Town shall have by ordinance ordered the Building Inspector to proceed to effectuate the purpose of this Chapter with respect to the particular property or properties that the Building Inspector shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. This ordinance shall be recorded in the office of the Register of Deeds in the County where the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

17-3.5. Demolition. ~~(F) That,~~ If the owner fails to comply with an order to remove or demolish the dwelling, the Building Inspector may cause such dwelling to be removed or demolished. The duties of the Building Inspector set forth in sections (D) and (E) above shall not be exercised until the governing body shall have by ordinance ordered the Building Inspector to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the Building Inspector shall have found to be unfit for human habitation and which property or properties shall be described in the Ordinance. No such Ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This Ordinance shall be recorded in the office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

17-3.6. Abandonment of Intent to Repair. If the dwelling has been vacated and closed for a period of one year pursuant to an ordinance adopted pursuant to Section 17-3.4 or after the Building Inspector issues an order or proceedings have commenced under the substandard housing regulations regarding a dwelling to be repaired or vacated and closed as provided in this subdivision, then the governing board may find that the owner has abandoned the intent and purpose to repair, alter, or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, and welfare of the local government in that the dwelling would continue to deteriorate, would create a fire and

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safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling that might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing board may, after the expiration of such one-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

17-3.6.1. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days.

17-3.6.2. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

17-3.7. Liens.

17-3.7.1. ~~(G) That~~ The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal of demolition by the Building Inspector shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessments provided in ~~Section (J) of this Chapter.~~ Article 10 of Chapter 160A of the General Statutes.

17-3.7.2. If the real property upon which the cost was incurred is located within the town limits, then the amount of the cost is also a lien on any other real property of the owner located within the city limits or within one mile thereof except for the owner's primary residence. The additional lien provided in this sub-subdivision is inferior to all prior liens and shall be collected as a money judgment.

17-3.7.3. If the dwelling is removed or demolished by the Building Inspector, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the Building Inspector, shall be secured in the manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the Town to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

17-3.8. Civil action. If any occupant fails to comply with an order to vacate a dwelling, the Building Inspector may file a civil action in the name of the Town to remove such occupant.

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The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as defendant any person occupying such dwelling. The Clerk of Superior Court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date, and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. If the summons appears to have been duly served and if at the hearing the Building Inspector produces a certified copy of an ordinance adopted by the Town pursuant to subdivision (5) of this section authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing board has ordered the public officer to proceed to exercise his duties under subdivisions (4) and (5) of this section to vacate and close or remove and demolish the dwelling.

17-3.9. Additional notices to affordable housing organizations. Whenever a determination is made pursuant to Section 17-3.3 that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The Building Inspector or Clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition. (2019-111, s. 2.4.)

17-4. Standards. An ordinance adopted under this Article shall provide that the Building Inspector may determine that a dwelling is unfit for human habitation if the officer finds that conditions exist in the dwelling that render it dangerous or injurious to the health, safety, or welfare of the occupants of the dwelling, the occupants of neighboring dwellings, or other residents of the jurisdiction. Defective conditions may include the following, without limiting the generality of the foregoing: defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; or uncleanliness. The following standards will be used to guide the Building Inspector in determining the fitness of a dwelling for human habitation. (2019-111, s. 2.4.)

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17-5. Service of complaints and orders.

17-5.1. (H) Complaints or orders issued by the Building Inspector pursuant to an Ordinance adopted under this Chapter Ordinance shall be served upon persons either personally or by registered or certified mail. When service is made by certified mail, a copy of the complaint or order may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused but the regular mail is not returned by the post office within 10 days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

17-5.2. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the Building Inspector in the exercise of reasonable diligence, or, if the owners are known but have refused to accept service by certified mail, and the Building Inspector makes an Affidavit to that effect, then the serving of the Complaint or Order upon the unknown owners or other persons may be made by publication in the newspaper having general circulation in the jurisdiction Town at least once no later than the time at which personal service would be required under the provisions of this Chapter Ordinance. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected ~~effected~~. (2019-111, s. 2.4.)

17-6. Remedies.

17-6.1. (H) An appeal from any decision or order of the Building Inspector is a quasi-judicial matter and may be taken by any person aggrieved thereby or by any officer, board or commission of the Town. Such appeal shall lie with the Board of Adjustment. Any appeal from the Building Inspector shall be taken within (10) days from the rendering of the decision or service of the order by filing with the Building Inspector and with the Board of Adjustments which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Building Inspector shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the Building Inspector refusing to allow the person aggrieved thereby to do any act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the Building Inspector requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board of Adjustment, unless the Building Inspector certifies to the Board, after the notice of appeal is filed with him, that because of facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of this requirement would cause imminent peril to life or property. In that case, the requirement shall not be suspended except by restraining order, which may be granted for due cause shown upon not less than one day's written notice to the Building Inspector, by the Board of Adjustment, or by a court of record upon petition made pursuant to this Chapter Ordinance.

17-6.2. (H) The Board of Adjustment appeals board ~~appeals board~~ shall fix a reasonable time for hearing appeals, shall give due notice to the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The Board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and

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may make any decision and order that in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Building Inspector, but the concurring vote of four members of the board shall be necessary to reverse or modify any decision or order of the Building Inspector. The board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of the ordinance, to adapt the application of the ordinance to the necessities of the case to the end that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

17-6.3. ~~(K)~~ Every decision of the board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

17-6.4. ~~(L)~~ Any person aggrieved by order issued by the Building Inspector or a decision rendered by the board may petition the superior court for an injunction restraining the Building Inspector from carrying out the order or decision and the court may, upon such petition, issue a temporary injunction restraining the Building Inspector pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the court on a petition within 20 days and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this subsection.

17-6.5. ~~(M)~~ If any dwelling is erected, constructed, altered, repaired, converted, maintained, or used in violation of this Part or any ordinance or code adopted under authority of this Part or any valid order or decision of the Building Inspector or board made pursuant to any ordinance or code adopted under authority of this Part, the Building Inspector or board may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or use, to restrain, correct or abate the violation, to prevent the occupancy of the dwelling, or to prevent any illegal act, conduct or use in or about the premises of the dwelling. (2019-111, s. 2.4.)

17.7. Compensation to owners of condemned property. Nothing in this Article shall be construed as preventing the owner or owners of any property from receiving just compensation for the taking of property by the power of eminent domain under the laws of this State nor as permitting any property to be condemned or destroyed except in accordance with the police power of the State. (2019-111, s. 2.4.)

17-8. Additional powers of public officer. An ordinance adopted by the governing board may authorize the enforcement officer to exercise any powers necessary or convenient to carry out and effectuate the purpose and provisions of this Article, including the following powers in addition to others herein granted:

17-8.1. To investigate the dwelling conditions within the planning jurisdiction in order to determine which dwellings therein are unfit for human habitation.

17-8.2. To administer oaths, affirmations, examine witnesses, and receive evidence.

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17-8.3. To enter upon premises for the purpose of making examinations in a manner that will do the least possible inconvenience to the persons in possession.

17-8.4. To appoint and fix the duties of officers, agents, and employees necessary to carry out the purposes of the ordinances.

17-8.5. To delegate any of his or her functions and powers under the ordinance to other officers and other agents. (2019-111, s. 2.4.)

17-9. Administration of ordinance. A local government adopting an ordinance under this Article shall, as soon as possible thereafter, prepare an estimate of the annual expenses or costs to provide the equipment, personnel, and supplies necessary for periodic examinations and investigations of the dwellings for the purpose of determining the fitness of dwellings for human habitation and for the enforcement and administration of its ordinances adopted under this Article. The local government is authorized to make appropriations from its revenues necessary for this purpose and may accept and apply grants or donations to assist it. (2019-111, s. 2.4.)

17-10. Supplemental nature of Article. Nothing in this Article shall be construed to abrogate or impair the powers of the courts or of any department of the town, to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof. The powers conferred by this Article shall be supplemental to the powers conferred by any other law in carrying out the provisions of the ordinance. (2019-111, s. 2.4.)

~~(N) This Ordinance shall become effective on August 9, 1988.~~