

**Chapter 16 - Land Use**

**ARTICLE 1 - General Provisions ..... 1-1**  
Section 16-1.1 Short Title ..... 1-1  
Section 16-1.2 Authority ..... 1-1  
Section 16-1.3 Jurisdiction. .... 1-1  
Section 16-1.4 Effective Date ..... 1-1  
Section 16-1.5 Relationship to Existing Land Use Code ..... 1-1  
Section 16-1.6 Relationship to Land Use Plan ..... 1-1  
Section 16-1.7 No Use of Land or Buildings ..... 1-1  
Section 16-1.8 No Boundary Line Adjustments..... 1-1  
Section 16-1.9 Fees ..... 1-2

**Article 2 - Basic Definitions and Interpretations ..... 2-1**  
Section 16-2.1 Word Interpretation ..... 2-1  
Section 16-2.2 General Definitions ..... 2-1  
Section 16-2.3 Adult Establishments ..... 2-20  
Section 16-2.4 Flood Plain Definitions ..... 2-25  
Section 16-2.5 Watershed Definitions ..... 2-32

**Article 3 - Administrative Mechanisms ..... 3-1**  
Section 16-3.1 Planning Board ..... 3-1  
Section 16-3.2 Board of Adjustment ..... 3-2  
Section 16-3.3 Land Use Administrator ..... 3-4  
Section 16-3.4 Board of Commissioners ..... 3-4  
Section 16-3.5 Conflicts of Interest ..... 3-4  
Section 16-3.6 Appearance Commission ..... 3-6

**Article 4 - Permits and Final Plat Approval ..... 4-1**  
Section 16-4.1 Zoning and Special Use Permits ..... 4-1  
Section 16-4.2 No Occupancy, Use, or Sale of lots until Requirements are Fulfilled ..... 4-1  
Section 16-4.3 Who May Submit Applications ..... 4-2  
Section 16-4.4 Applications To Be Complete ..... 4-2  
Section 16-4.5 Staff Consultation Before Formal Applications ..... 4-3  
Section 16-4.6 Staff Consultation After Application Submitted ..... 4-3  
Section 16-4.7 Zoning Permits ..... 4-4  
Section 16-4.8 Performance Guarantee to Ensure Compliance with Zoning Permit ..... 4-4  
Section 16-4.9 Special Use Permits ..... 4-4  
Section 16-4.10 Board of Commissioners Action on Special Use Permits ..... 4-5  
Section 16-4.11 Conditions to Approval of The Special Use Permit ..... 4-6  
Section 16-4.12 Performance Guarantee Under Special Use Permits ..... 4-6  
Section 16-4.13 Completing Developments in Phases ..... 4-7  
Section 16-4.14 Expiration of Permits ..... 4-7

|  |            |
|--|------------|
| Section 16-4.15 Effect of Permit on Successors and Assigns.....  | 4-8        |
| Section 16-4.16 Notice of Permit to be Recorded .....  | 4-8        |
| Section 16-4.17 Amendments to and Modifications of Permits .....   | 4-9        |
| Section 16-4.18 Reconsideration of Board Action.....   | 4-9        |
| Section 16-4.19 Applications to be Processed Expediently .....   | 4-9        |
| Section 16-4.20 Maintenance of Common Areas, Improvements, and Facilities .....                            | 4-9        |
| Section 16-4.21 Major and Minor Subdivisions.....  | 4-10       |
| <b>Article 5 - Appeals, Variances, Interpretations .....</b>   | <b>5-1</b> |
| Section 16-5.1 Appeals.....  | 5-1        |
| Section 16-5.2 Variances.....  | 5-2        |
| Section 16-5.3 Interpretations.....  | 5-3        |
| Section 16-5.4 Requests to be Heard Expediently .....  | 5-3        |
| Section 16-5.5 Burden of Proof.....  | 5-3        |
| <b>Article 6 - Hearing Procedures for Appeals and Applications.....</b>                                    | <b>6-1</b> |
| Section 16-6.1 General Requirements for Quasi-Judicial Hearings & Decisions.....                           | 6-1        |
| Section 16-6.2 Modification of Application at Hearing .....  | 6-2        |
| Section 16-6.3 Record .....  | 6-2        |
| <b>Article 7 - Enforcement and Review .....</b>  | <b>7-1</b> |
| Section 16-7.1 Complaints Regarding Violations.....  | 7-1        |
| Section 16-7.2 Persons Liable. ....  | 7-1        |
| Section 16-7.3 Procedures Upon Discovery of Violations. ....   | 7-1        |
| Section 16-7.4 Penalties and Remedies for Violations. ....   | 7-1        |
| Section 16-7.5 Permit Revocation .....   | 7-2        |
| Section 16-7.6 Judicial Review .....   | 7-2        |
| Section 16-7.7 Schedule of Civil Penalties .....   | 7-3        |
| <b>Article 8 - Nonconforming Situations .....</b>  | <b>8-1</b> |
| Section 16-8.1 Continuation of Nonconforming Situations and Completion of Non-<br>Conforming Projects..... | 8-1        |
| Section 16-8.2 Nonconforming Lots .....  | 8-1        |
| Section 16-8.3 Extension or Enlargement of Nonconforming Situations.....                                   | 8-2        |
| Section 16-8.4 Repair, Maintenance and Reconstruction .....  | 8-4        |
| Section 16-8.5 Change in Use of Property Where Nonconforming Situations Exists.....                        | 8-5        |
| Section 16-8.6 Abandonment and Discontinuance of Nonconforming Situations .....                            | 8-6        |
| Section 16-8.7 Completion of Nonconforming Projects.....   | 8-7        |
| Section 16-8.8 Nonconforming Signs.....  | 8-8        |
| <b>Article 9 - Zoning Districts and Zoning Map .....</b>   | <b>9-1</b> |
| Section 16-9.1 Residential Districts Established .....   | 9-1        |
| Section 16-9.2 Nonresidential Districts Established .....  | 9-1        |

|  |             |
|--|-------------|
| Section 16-9.3 Overlay Districts.....  | 9-2         |
| Section 16-9.4 Official Map.....   | 9-3         |
| Section 16-9.5 Amendments to Official Zoning Map. ....   | 9-3         |
| <b>Article 10 - Permissible Uses .....</b>   | <b>10-1</b> |
| Section 16-10.1 Table of Permissible Uses .....  | 10-1        |
| Section 16-10.2 Use of the Designations Z and S in Table of Permissible Uses. ....   | 10-1        |
| Section 16-10.3 Board of Adjustment Jurisdiction Over Uses Otherwise Permissible<br>With a Zoning Permit .....                         | 10-1        |
| Section 16-10-4 Zoning Administrator Jurisdiction Over Uses Otherwise Permissible<br>With SUP .....                                    | 10-1        |
| Section 16-10.5 Permissible Uses and Specific Exclusions. ....   | 10-1        |
| Section 16-10.6 Accessory Uses.....  | 10-2        |
| Section 16-10.7 Permissible Uses Not Requiring Permits. ....   | 10-3        |
| Section 16-10.8 Change in Use .....  | 10-3        |
| Section 16-10.9 Manufacturing/Processing, Etc. Uses .....  | 10-4        |
| Section 16-10.10 Combination Uses.....   | 10-5        |
| Section 16-10.11 More Specific Use Controls.....   | 10-6        |
| Section 16-10.12 Short term Rentals .....  | 10-6        |
| <i>Table of Permissible Uses.....</i>  | <i>10-8</i> |
| <b>Article 11 - Supplementary Land Use Regulations.....</b>  | <b>11-1</b> |
| Section 16-11.1 Bed and Breakfast.....   | 11-1        |
| Section 16-11.2 Perimeter Fences and Walls .....   | 11-1        |
| <b>Article 12 - Density and Dimensional Regulations.....</b>   | <b>12-1</b> |
| Section 16-12.1 Minimum Lot Size .....   | 12-1        |
| Section 16-12.2 Residential Density.....   | 12-1        |
| Section 16-12.3 Minimum Lot Widths. ....   | 12-3        |
| Section 16-12.4 Building Setback Requirments .....   | 12-3        |
| Section 16-12.5 Setback Requirements from Historic Trails .....  | 12-6        |
| Section 16-12.6 Central Business and Town Center Districts Setbacks, Building<br>Height, Open Space, and Green Space Requirments ..... | 12-6        |
| Section 16-12.7 Density on Lots Where Portion Dedicated to Town .....  | 12-11       |
| Section 16-12.8 Flexibility in Applying the Standards Contained in this Article.....   | 12-11       |
| <b>Article 13 - Open Space.....</b>  | <b>13-1</b> |
| Section 16-13.1 Usable Open Space .....  | 13-1        |
| Section 16-13.2 Ownership and Maintenance Required Open Space .....  | 13-1        |
| Section 16-13.3 Dediation of Open Space .....  | 13-2        |
| Section 16-13.4 Homeowners Associations .....  | 13-2        |

|  |             |
|--|-------------|
| <b>Article 14 - Streets and Sidewalks .....</b>  | <b>14-1</b> |
| Section 16-14.1 Street Classification. ....  | 14-1        |
| Section 16-14.2 Access to Public Streets in General .....  | 14-2        |
| Section 16-14.3 Access to Arterial Streets .....   | 14-2        |
| Section 16-14.4 Entrances to Streets .....   | 14-2        |
| Section 16-14.5 Coordination with Surrounding Streets .....  | 14-2        |
| Section 16-14.6 Relationship of Streets Topography .....   | 14-3        |
| Section 16-14.7 Street Width, Sidewalk, and Drainage in Subdivisions .....                         | 14-3        |
| Section 16-14.8 General Layout of Streets .....  | 14-4        |
| Section 16-14.9 Street Intersections .....   | 14-4        |
| Section 16-14.10 Construction Standards and Requirements .....                                     | 14-4        |
| Section 16-14.11 Private Roads in Subdivisions and Access to Subdivisions by Private<br>Roads..... | 14-4        |
| Section 16-14.12 Road and Sidewalk Requirements in Unsubdivided Developments .....                 | 14-6        |
| Section 16-14.13 Attention to Handicapped in Street and Sidewalk Construction .....                | 14-7        |
| Section 16-14.14 Street Names and House Numbers .....  | 14-7        |
| Section 16-14.15 Bridges .....   | 14-7        |
| Section 16-14.16 Utilities .....   | 14-7        |
| Section 16-14.17 Sidewalk Requirements .....   | 14-7        |
| <br>   |             |
| <b>Article 15 - Utilities.....</b>   | <b>15-1</b> |
| Section 16-15.1 Utility Ownership and Easement Rights .....  | 15-1        |
| Section 16-15.2 Lots Served by Public Water or Sewer .....   | 15-1        |
| Section 16-15.3 Sewage Disposal Facilities Required .....  | 15-1        |
| Section 16-15.4 Determining Compliance with Section 16-15.3 .....                                  | 15-1        |
| Section 16-15.5 Water Supply System Required .....   | 15-2        |
| Section 16-15.6 Determining Compliance with 16-15.5.....   | 15-2        |
| Section 16-15.7 Lighting Requirements .....  | 15-2        |
| Section 16-15.8 Excessive Illumination .....   | 15-2        |
| Section 16-15.9 Electric Power .....   | 15-3        |
| Section 16-15.10 Telephone Service .....   | 15-3        |
| Section 16-15.11 Underground Utilities .....   | 15-3        |
| Section 16-15.12 Utilities To Be Consistent With Internal and External Development. ....           | 15-3        |
| Section 16-15.13 As-Built Drawings Required .....  | 15-4        |
| Section 16-15.14 Fire Hydrants.....  | 15-4        |
| Section 16-15.15 Sites for and Screening Dumpsters.....  | 15-4        |
| <br>   |             |
| <b>Article 16 - Flood Damage Prevention; Storm Water Mgmt; Watershed Protection .....</b>          | <b>16-1</b> |
| Section 16-16.1 Findings of Fact .....   | 16-1        |
| Section 16-16.2 Statement of Purpose .....   | 16-1        |
| Section 16-16.3 Objectives .....   | 16-1        |
| Section 16-16.4 Lands to Which This Article Applies .....  | 16-2        |

|                  |  |       |
|------------------|--|-------|
| Section 16-16.5  | Basis for Establishing the Areas of Special Flood Hazard .....   | 16-2  |
| Section 16-16.6  | Establishment of Floodplain Development Permit .....   | 16-2  |
| Section 16-16.7  | Compliance .....   | 16-2  |
| Section 16-16.8  | Abrogation and Greater Restrictions .....  | 16-2  |
| Section 16-16.9  | Interpretation .....   | 16-2  |
| Section 16-16.10 | Penalties for Violation .....  | 16-2  |
| Section 16-16.11 | Designation of Floodplain Administrator .....  | 16-3  |
| Section 16-16.12 | Development Permit and Certification Requirements.....   | 16-3  |
| Section 16-16.13 | Elevation Certificates .....   | 16-4  |
| Section 16-16.14 | Floodproofing Certificate.....   | 16-5  |
| Section 16-16.15 | Certificate Exemptions.....  | 16-5  |
| Section 16-16.16 | Duties and Responsibilities of Local Administrator .....   | 16-5  |
| Section 16-16.17 | Corrective Procedures .....  | 16-7  |
| Section 16-16.18 | Variance Procedures.....   | 16-8  |
| Section 16-16.19 | General Standards for Flood Hazard Reduction .....   | 16-9  |
| Section 16-16.20 | Specific Standards for Flood Hazard Reduction .....  | 16-11 |
| Section 16-16.21 | Additions/Improvements (Pre-Firm Structures) .....   | 16-12 |
| Section 16-16.22 | Additions/Improvements (Post-Firm Structures) .....  | 16-13 |
| Section 16-16.23 | Recreational Vehicle .....   | 16-13 |
| Section 16-16.24 | Temporary Non-Residential Structures .....   | 16-13 |
| Section 16-16.25 | Accessory Structures .....   | 16-13 |
| Section 16-16.26 | Standards for Floodplains Without Established Base Flood Elevation.....  | 16-14 |
| Section 16-16.27 | Standards for Riverine Floodplains with Base Flood Elevations but<br>Without Established Floodways or Non-encroachment Areas ..... | 16-15 |
| Section 16-16.28 | Floodways and Non-encroachment Areas .....   | 16-15 |
| Section 16-16.29 | Drainage, Erosion Control, Storm Water Management.....   | 16-15 |
| Section 16-16.30 | Development Must Drain Properly .....  | 16-16 |
| Section 16-16.31 | Storm Water Management.....  | 16-16 |
| Section 16-16.32 | Sedimentation and Erosion Control .....  | 16-17 |
| Section 16-16.33 | Purpose of the Watershed Protection Ordinance .....  | 16-18 |
| Section 16-16.34 | Duties of the Watershed Administrator. ....  | 16-19 |
| Section 16-16.35 | Appeal from the Watershed Administrator .....  | 16-20 |
| Section 16-16.36 | Establishment of Watershed Review Board; Powers and Duties .....   | 16-20 |
| Section 16-16.37 | Establishment of Watershed Areas .....   | 16-23 |
| Section 16-16.38 | Watershed Areas Described .....  | 16-23 |
| Section 16-16.39 | Cluster Development .....  | 16-25 |
| Section 16-16.40 | Buffer Areas Required .....  | 16-25 |
| Section 16-16.41 | Rules Governing the Interpretation of Watershed Area Boundaries .....  | 16-25 |
| Section 16-16.42 | Existing Development .....   | 16-26 |
| Section 16-16.43 | Watershed Protection Permit .....  | 16-26 |
| Section 16-16.44 | Watershed Occupancy Permit .....   | 16-27 |
| Section 16-16.45 | Public Health, in General .....  | 16-27 |

|  |             |
|--|-------------|
| Section 16-16.46 Abatement .....   | 16-27       |
| Section 16-16.47 Watershed Boundary Map .....  | 16-27       |
| Section 16-16.48 Amendments .....  | 16-27       |
| <b>Article 17 - Signs.....</b>   | <b>17-1</b> |
| Section 16-17.1 Purpose .....  | 17-1        |
| Section 16-17.2 Applicability.....   | 17-1        |
| Section 16-17.3 Certain Historic Signs Excluded from Regulation.....                 | 17-1        |
| Section 16-17.4 Prohibited Signs .....   | 17-2        |
| Section 16-17.5 General Sign Regulations .....                                       | 17-3        |
| Section 16-17.6 Approval Procedures.....   | 17-4        |
| Section 16-17.7 Master Sign Plan .....   | 17-5        |
| Section 16-17.8 Signs Permitted in All Zoning Districts .....                        | 17-6        |
| Section 16-17.9 Computation of Sign Height.....                                      | 17-6        |
| Section 16-17.10 Signs Permitted In All Zoning Districts.....                        | 17-6        |
| Section 16-17.11 Signs Permitted in Residential Districts .....                      | 17-9        |
| Section 16-17.12 Signs Permitted in Non-Residential Districts.....                   | 17-10       |
| Section 16-17.13 Church, School, Hospital, or Public Facility Signs .....            | 17-15       |
| Section 16-17.14 Unlawful Cutting of Trees or Shrubs.....                            | 17-15       |
| <b>Article 18 - Telecommunication Towers .....</b>                                   | <b>18-1</b> |
| Section 16-18.1 Authority .....  | 18-1        |
| Section 16-18.2 Purpose .....  | 18-1        |
| Section 16-18.3 Goals.....   | 18-1        |
| Section 16-18.4 Applicability.....   | 18-1        |
| Section 16-18.5 Permit Required .....  | 18-1        |
| Section 16-18.6 Issuance of Permit/Expiration.....                                   | 18-3        |
| Section 16-18.7 Tower Approval Standards .....                                       | 18-3        |
| Section 16-18.8 Denial of Permit .....   | 18-6        |
| Section 16-18.9 Continued Compliance Required .....                                  | 18-6        |
| Section 16-18.10 Removal of Abandoned Towers .....                                   | 18-7        |
| Section 16-18.11 Standards for Commercial Wireless Telecommunications Antennas ..... | 18-7        |
| <b>Article 19 - Adult Business Establishments .....</b>                              | <b>19-1</b> |
| Section 16-19.1 Purpose .....  | 19-1        |
| Section 16-19.2 Findings .....   | 19-1        |
| Section 16-19.3 Classification of Adult Business Establishments .....                | 19-3        |
| Section 16-19.4 Licenses Required .....  | 19-3        |
| Section 16-19.5 License Fees and Terms .....   | 19-4        |
| Section 16-19.6 Application Procedures for Adult Business Establishment License..... | 19-4        |
| Section 16-19.7 Fees. ....   | 19-9        |
| Section 16-19.8 License Posting and Display .....                                    | 19-9        |

|  |  |       |
|--|--|-------|
| Section 16-19.9  | Inspection .....   | 19-9  |
| Section 16-19.10   | License Denial, Suspension, or Revocation; Appeal .....  | 19-10 |
| Section 16-19.11   | Transfer of License .....  | 19-11 |
| Section 16-19.12   | Location of Adult Business Establishments. ....  | 19-11 |
| Section 16-19.13   | Additional Regulations for Adult Motels. ....  | 19-12 |
| Section 16-19.14   | Additional Regulations Pertaining to Exhibition of Sexually Explicit<br>Films, Videos or Live Entertainment..... | 19-12 |
| Section 16-19.15   | Additional Regulations for Escort Agencies.....  | 19-13 |
| Section 16-19.16   | Additional Regulations for Nude Model Studios.....   | 19-13 |
| Section 16-19.17   | Prohibited Acts and Conduct. ....  | 19-14 |
| Section 16-19.18   | Exterior Portions of Adult Business Establishments.....  | 19-14 |
| Section 16-19.19   | Signage.....   | 19-15 |
| Section 16-19.20   | Hours of Operation .....   | 19-15 |
| Section 16-19.21   | Injunction .....   | 19-15 |
| <b>Article 20 - Parking .....</b>                                    | <b>20-1</b>  |       |
| Section 16-20.1  | Number of Parking Spaces Required .....  | 20-1  |
| Section 16-20.2  | Table of General Parking Requirements.....   | 20-2  |
| Section 16-20.3  | Parking Requirements for Central Business and Town Center Districts.....   | 20-5  |
| Section 16-20.4  | Flexibility in Administration Required .....   | 20-8  |
| Section 16-20.5  | Payment of Fee in Lieu of Providing Required Parking Spaces.....   | 20-8  |
| Section 16-20.6  | Parking Space Dimensions. ....   | 20-9  |
| Section 16-20.7  | Required Widths of Parking Area Aisles and Driveways.....  | 20-9  |
| Section 16-20.8  | General Design Requirements .....  | 20-10 |
| Section 16-20.9  | Vehicle Accomadation Area Surfaces .....   | 20-10 |
| Section 16-20.10   | Joint Use of Required Parking Spaces.....  | 20-11 |
| Section 16-20.11   | Satellite Parking .....  | 20-11 |
| Section 16-20.12   | Special Provisions for Lots with Existing Buildings .....  | 20-11 |
| Section 16-20.13   | Loading and Unloading Areas.....   | 20-12 |
| <b>Article 21 – Commercial Design and Appearance Standards .....</b> | <b>21-1</b>  |       |
| Section 16-21.1  | Purpose. ....  | 21-1  |
| Section 16-21.2  | Applicability.....   | 21-1  |
| Section 16-21.3  | Criteria for Design.....   | 21-2  |
| Section 16-21.4  | Exterior Walls and Facades of Commercial Buildings.....  | 21-2  |
| Section 16-21.5  | Roof Lines.....  | 21-3  |
| Section 16-21.6  | Color.....   | 21-3  |
| Section 16-21.7  | Topography.....  | 21-4  |
| Section 16-21.8  | Lighting.....  | 21-4  |
| Section 16-21.9  | General Landscaping.....   | 21-4  |
| Section 16-21.10   | Landscape Buffer.....  | 21-5  |
| Section 16-21.11   | Sidewalks .....  | 21-6  |

|   |             |
|---|-------------|
| Section 16-21.12 Utility Lines. ....  | 21-7        |
| Section 16-21.13 Parking Areas. ....  | 21-7        |
| Section 16-21.14 Mechanical and Utility Areas.....  | 21-7        |
| Section 16-21.15 Trash and Containment Areas. ....  | 21-7        |
| Section 16-21.16 Fences and Walls. ....   | 21-8        |
| Section 16-21.17 Vacated Buildings.....   | 21-8        |
| Section 16-21.18 Variance from Standards. ....  | 21-8        |
| Section 16-21.19 Additional Standards for Large Scale Retail Buildings. ....  | 21-9        |
| Section 16-21.20 Definitions and Explanations of Additional Requirements. ....  | 21-10       |
| Section 16-21.21 Display of Newsracks and Publications in Town Center, Central<br>Business and Office Institutional Zoning Districts..... | 21-11       |
| Section 16-21.22 Outdoor Display of Merchandise. ....   | 21-11       |
| <b>Article 22 - Screening and Trees .....</b>   | <b>22-1</b> |
| Section 16-22.1 Board Findings Concerning Need for Requirements. ....   | 22-1        |
| Section 16-22.2 General Screening Standard .....  | 22-1        |
| Section 16-22.3 Compliance With Screening Standards.....  | 22-1        |
| Section 16-22.4 Screening Land Use Classification.....  | 22-1        |
| Section 16-22.5 Table of Screening Requirements.....  | 22-2        |
| Section 16-22.6 Description of Screens .....  | 22-2        |
| Section 16-22.7 Width of Landscaping Screen. ....   | 22-3        |
| Section 16-22.8 Town Center and Central Business District Requirements.....   | 22-3        |
| Section 16-22.9 Flexibility in Administration Required. ....  | 22-4        |
| Section 16-22.10 Combination Uses.....  | 22-4        |
| Section 16-22.11 Maintenance of Screening and Landscape Plantings .....   | 22-5        |
| Section 16-22.12 Silvicultural Standards .....  | 22-5        |
| Section 16-22.13 Board Findings and Declaration of Policy on Shade Trees .....  | 22-5        |
| Section 16-22.14 Required Trees Along Dedicated Streets.....  | 22-6        |
| Section 16-22.15 Retention and Protection of Large Trees. ....  | 22-6        |
| Section 16-22.16 Tree Credits.....  | 22-7        |
| Section 16-22.17 Protection of Existing Vegetation .....  | 22-8        |
| Section 16-22.18 Tree Topping.....  | 22-9        |
| Section 16-22.19 Shade Trees in Parking Areas.....  | 22-9        |
| Section 16-22.20 Mulching and Maintenance on Commercial Property .....  | 22-10       |
| Section 16-22.21 Penalties.....   | 22-10       |
| <b>Article 23 - Amendments .....</b>  | <b>23-1</b> |
| Section 16-23.1 Board Findings Concerning Need for Requirements. ....   | 23-1        |
| Section 16-23.2 Initiation of Amendments.....   | 23-1        |
| Section 16-23.3 Planning Board Consideration of Proposed Amendments. ....   | 23-1        |
| Section 16-23.4 Hearing Required; Notice.....   | 23-2        |
| Section 16-23.5 Board Action on Amendments.....   | 23-2        |

Section 16-23.6 Ultimate Issue Before Board on Amendments ..... 23-3

**Appendices.....A-1**

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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 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 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. 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 their 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, 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 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.

**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 16-12.6. 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-premises.

**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.

**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.

**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.

**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.

**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.

**Kennel.** 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.

**Manufactured Home.** A dwelling 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 as defined in NCGS 143-145(7).

**Mobile Home Park.** A multi-family 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 multi-family 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.

**News rack.** 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 "news rack material").

**News rack, Modular.** A grouping of several news rack containers, that have the appearance of one unified news rack of the same color, style, and design, generally provided by a modular news rack 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.

***Outdoor Dining.*** Outdoor dining facilities that are associated with and in the immediate vicinity of a restaurant, cafe, or other permitted establishment that serves food or drinks for on-site consumption.

***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.

***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, whichever 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.** The rental, lease, or offer to make available, any attached or detached residential dwelling unit, or portion thereof, by way of a rental agreement, lease, license, or any other means, (whether oral or written) for compensation or consideration, for a duration that is less than 28 consecutive days.

**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, Sub-collector.** 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 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.

**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 impact 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 it's 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) or
- c) having an approved site specific or phased development plan as authorized by the NCGS 160D-108(d)(3).

**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 offspring or other adverse health effects.

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

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

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

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

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

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

date and time. Such notice(s) shall be posted at least seven days prior to the meeting at which the matter is to be considered. The staff shall also send written notice to adjoining property owners if and to the extent required by any regulation or requirement of the planning board adopted under Section 16-3.1.5.7.

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

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

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

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

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

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

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

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

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

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

**Section 16-3.2. Board of Adjustment.** There shall be a Board of Adjustment consisting of six regular members and three alternates. The Blowing Rock Board of Commissioners shall appoint

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

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

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

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

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

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

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

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

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

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

**16-3.2.4. Voting.** The concurring vote of four-fifths of the Board of Adjustment (including alternates sitting in lieu of regular members) shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this section, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial

matter shall not be considered members of the board for calculations of the requisite majority if there are no qualified alternates available to take the place of such members. The Board shall not hear a request for a variance or an appeal unless there are sufficient members present (including seated alternates) to decide the matter as specified herein.

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

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

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

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

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

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

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

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

**Section 16-3.4. Board of Commissioners.** The Board of Commissioners, in considering special use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Articles 4 and 5 of this chapter. In considering proposed changes in the text of this chapter or in the zoning map, including the establishment of Conditional Districts, the Board acts in its legislative capacity and must proceed in accordance with the requirements of Article 23. Unless otherwise specifically provided in this chapter, in acting upon special use permit requests or in considering amendments to this chapter or the zoning map, the Board shall follow the regular voting and other requirements as set forth in other provisions of the town code, the town charter, or general law.

**Section 16-3.5. Conflicts of Interest.** Service on a governing board, appointed board or administrative staff of the Town of Blowing Rock is a public trust. Each person has a duty to represent the public interest fairly and honestly. To protect the integrity of governmental

decisions and to promote public confidence in the decisions, no person shall use their position for private gain. The following conflict-of-interest standards are provided for the governing board, advisory boards, and administrative staff, in accordance with NCGS 160D-109.

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

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

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

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

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

**16-3.6. 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 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. 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. Beginning with new appointments in March 2018, members may be limited to two terms of service.

**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. 160D-309.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a) *Certificate of Ownership*

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

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Date

b) *Certificate of Approval*

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

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

\_\_\_\_\_  
Administrator

\_\_\_\_\_  
Date

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a) *Certificate of Approval*

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Administrator

b) *Certificate of Ownership and Dedication*

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



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

## **Article 5 - Appeals, Variances, Interpretations**

**Section 16-5.1. Appeals.** The Board of Adjustment shall conduct a quasi-judicial hearing and decide appeals of administrative officials charged with enforcement of the Land Use Ordinance in accordance with the provisions of this section.

- a) The Town and any person who has standing under NCGS 160D-405(b) may appeal a decision to the Board. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.
- b) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail, NCGS 160D-403(b).
- c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. Notice sent by first class mail shall be considered received after three (3) days, NCGS 160D-405(c).
- d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property for at least 10 days. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.
- e) The official who made the decision shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- f) An appeal of an administrative decision stays enforcement of the action appealed from, including fines, NCGS 160D-405(c). Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the regulations shall not stay further review of an application for permits or permissions to use such property; in these situations, the appellant may request, and the Board may grant, a stay of a final decision of permit applications or building permits affected by the issue being appealed.
- g) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all powers of the official who made the decision.

- h) When hearing an appeal pursuant to NCGS 160D-1402 or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in NCGS 160D-1402(j)
- h) The parties to an appeal may agree to mediation or other forms of alternative dispute resolution.

**16-5.2. Variances.** When unnecessary hardships would result from carrying out the strict letter of these regulations, the Board of Adjustment shall conduct a quasi-judicial hearing and vary such regulations upon a showing of all of the following:

- a) Unnecessary hardship would result from the strict application of the regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- d) The requested variance is consistent with the spirit, purpose, and intent of the regulations, such that public safety is secured, and substantial justice achieved. Substantial justice is not achieved when granting the variance would be injurious to the neighborhood or to the general welfare.

**16-5.2.1.** In making the foregoing determinations, the Board of Adjustment shall be guided by the following principles:

- a) The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;
- b) The hardship relates to the applicant's land, rather than personal circumstances;
- c) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
- d) The hardship is not the result of the applicant's own actions;
- e) The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance; and
- f) The variance will neither result in the extension of a nonconforming situation in violation of Article VIII nor authorize the initiation of a nonconforming use of land.

**16-5.2.2.** In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.

**16-5.2.3.** A variance may be issued for an indefinite duration or for a specified duration only.

**16-5.2.4.** The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this chapter.

**Section 16-5.3. Interpretations.** The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the Administrator, they shall be handled as provided in Section 16-5.1.

**16-5.3.1.** An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator in the inspections department. The application shall contain sufficient information to enable the Board to make the necessary interpretation.

**16-5.3.2.** Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

- a) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such center lines;
- b) Boundaries indicated as approximately following lot lines, Town limits or extraterritorial boundary lines shall be construed as following such lines, limits or boundaries;
- c) Boundaries indicated as following shorelines shall be construed to follow such shorelines and in the event of change in the shoreline shall be construed as following such shorelines;
- d) Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement, using the scale of the Official Zoning Map;
- e) Where any street or alley is hereafter officially vacated or abandoned, the regulation applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

**16-5.3.3.** Interpretations of the location of floodway and floodplain boundary lines may be made by the Administrator as provided in Section 16-16.15.

**Section 16-5.4. Requests to be Heard Expeditiously.** As provided in Section 16-4.19 the Board of Adjustment shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Article VI, and obtain the necessary information to make sound decisions.

**Section 16-5.5. Burden of Proof.** The burden of proof shall lie upon the applicant or appellant, as the case may be, for any and all proceedings before the Board of Adjustment.

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## **Article 6 - Hearing Procedures for Appeals and Applications**

**Section 16-6.1. General Requirements for Quasi-Judicial Hearings and Decisions.** A quasi-judicial decision is a process that involves the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances, special use permits, and appeals of administrative determinations.

**16-6.1.1. Procedure for Filing Appeals and Applications.** Notices of appeal shall be filed with the Town Clerk. Applications for special use permits and applications for variances shall be filed with the Administrator and processed in accordance with applicable provisions of the Land Use Ordinance. All appeals and applications shall be made upon the form specified for that purpose and all information required on the form shall be complete before an appeal or application shall be considered as having been filed.

**16-6.1.2. Notice of Hearing.** Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal or application is the subject of the hearing, to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to immediate properties separated by street, railroad, or other transportation corridor as provided by NCGS 160D-602. In the absence of evidence to the contrary, the Town may rely on the applicable County tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. In addition, notice of a hearing on an application for a special use permit shall be posted at Town Hall and published in a newspaper having general circulation in the Town within that same time period.

**16-6.1.3. Hearings.** The board with jurisdiction to hear and decide a matter shall conduct a quasi-judicial hearing on the appeal or application. It shall determine contested facts and make its decision within 45 days of the conclusion of hearing. Testimony shall be given under oath. All parties with standing, must be allowed to participate fully in an evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments. The Board chair must rule on objections to inclusion or exclusion of administrative material. The board's decision shall be based upon competent, material, and substantial evidence in the record of the hearing. The decision shall establish written findings of fact and conclusions of law, in accordance with NCGS 160D-406. The written decision shall be signed by the mayor, the chair or other duly authorized member of the board. The decision of the board shall be effective upon filing such decision with the clerk to the Board. The clerk shall see that the decision is delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, any entity granted party status at the

hearing, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective and shall certify that proper notice has been made.

**Section 16-6.2. Modification of Application at Hearing.** In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Commissioners or Board of Adjustment, the applicant may agree to modify the application, including the plans and specifications submitted. Provided, however, if such modifications are so substantial or extensive that the permit-issuing board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the staff.

**Section 16-6.3. Record.** A tape recording shall be made of all hearings required by Section 16-6.1. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made. Whenever practicable, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings. Records made pursuant to this section shall be kept on file by the Town for at least two years and may thereafter be disposed of only in accordance with NCGS 132-3.

## **Article 7 - Enforcement and Review**

**Section 16-7.1. Complaints Regarding Violations.** Whenever the Administrator receives a written, signed complaint alleging a violation of this chapter, the Administrator shall investigate the complaint, take whatever action is warranted, and inform the permittee or landowner in writing what actions have been or will be taken.

**Section 16-7.2. Persons Liable.** The landowner, tenant, or occupant of any building or land or part thereof, and any architect, builder, contractor, agent or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this chapter may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

**Section 16-7.3. Procedures Upon Discovery of Violations.** If the Administrator finds that any provision of this chapter is being violated, he shall send a written notice to the permittee and landowner, if different, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Administrator's discretion. Notice shall be provided in accordance with NCGS 160D-404(a).

**16-7.3.1.** The final written notice (and the initial written notice may be the final notice) shall state what action the administrator intends to take if the violation is not corrected and shall advise that the administrator's decision or order may be appealed to the Board of Adjustment as provided in Section 16-5.1.

**16-7.3.2.** Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this ordinance or pose a danger to the public health, safety, or welfare, the Administrator may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in Section 16-7.4.

**16-7.3.3.** During the course of the investigation, the Administrator may enter the premises during reasonable hours and upon presenting credentials. The Administrator must have consent of the landowner or obtain an administrative warrant to inspect areas not open to the public.

**Section 16-7.4. Penalties and Remedies for Violations.** A violation of this chapter for which Section 16-7.4.1 prescribes a civil penalty is not a misdemeanor or infraction under G.S. 14-4.

**16-7.4.1.** Any act constituting a violation of the provisions of this chapter or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the grants of variances or special use permits, shall subject the offender to a civil penalty of at least \$100.00 but not to exceed \$500.00 dollars. If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the Town in a civil action in the nature of debt. A civil penalty may not be appealed to the Board of Adjustment if the offender was sent a final notice of violation in

accordance with Section 16-7.3 and did not take an appeal to the Board of Adjustment within the prescribed time.

**16-7.4.2.** This chapter may also be enforced by any appropriate equitable action.

**16-7.4.3.** Each day that any violation continues shall be considered a separate offense for purposes of the penalties and remedies specified in this section.

**Section 16-7.5. Permit Revocation.** A zoning, sign, or special use permit may be revoked by the permit issuing authority in accordance with the provisions of this section if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this chapter, or any additional requirements lawfully imposed by the permit issuing board authority.

**16-7.5.1.** Before a special use permit may be revoked, all of the notice and hearing and other requirements of Article 6 shall be complied with. The notice shall inform the permit recipient of the alleged grounds for the revocation.

**16-7.5.1.1.** The burden of presenting evidence sufficient to authorize the permit-issuing authority to conclude that a permit should be revoked for any of the reasons set forth in Section 16-7.5, shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.

**16-7.5.1.2.** A motion to revoke a permit shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.

**16-7.5.2.** Before a zoning or sign permit may be revoked, the Administrator shall give the permit recipient ten-days' notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and right to obtain an informal hearing on the allegations. If the permit is revoked, the Administrator shall provide to the permittee a written statement of the decision and the reasons, therefore.

**16-7.5.3.** No person may continue to make use of land or buildings in the manner authorized by any zoning, sign, or special use permit after such permit has been revoked in accordance with this section.

**Section 16-7.6. Judicial Review.** Every decision of the Board of Commissioners granting or denying a special use permit and every final decision of the Board of Adjustment shall be subject to review by the Superior Court of Watauga or Caldwell County, as appropriate, by proceedings in the nature of certiorari, NCGS 160D-1402.

**16-7.6.1.** The petition for the writ of certiorari must be filed with the appropriate Clerk of Superior Court within 30 days after the later of the following occurrences:

- a) A written copy of the board's decision (see Section 16-6.5) has been filed in the office of the Inspections Department; and
- b) A written copy of the Board's decision (see Section 16-6.5) has been delivered, by personal service or certified mail, return receipt requested, to the applicant or

appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

- c) A copy of the petition for the writ of certiorari and the writ of certiorari shall be served upon the Town of Blowing Rock.

**Section 16-7.7. Schedule of Civil Penalties**

|  |                                  |
|--|----------------------------------|
| Illegal signs and banners                            | \$100.00                         |
| Itinerant merchant sales                             | \$100.00                         |
| Storage of junked cars outside of enclosed structure | \$100.00                         |
| Filling in the designated floodway                   | \$250.00                         |
| Using a travel trailer as a residence                | \$250.00                         |
| Removing a protected tree                            | See Section 16-22.21             |
| Removal of required buffer                           | See Section 16-22.21             |
| Short-term rental violation                          | \$500.00                         |
| Working without a permit (single-family)             | \$100.00 plus double permit fees |
| Working without a permit (commercial)                | \$500.00 plus double permit fees |
| Any other violation of Land Use Ordinance            | \$100.00                         |
| First repeat violation(s) after initial compliance   | 250% of original penalty         |
| Second repeat violation(s) after initial compliance  | 500% of original penalty         |

Each day the violation continues is considered a separate offense.

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## **Article 8 - Nonconforming Situations**

**Section 16-8.1. Continuation of Nonconforming Situations and Completion of Non-conforming Projects.** Except as otherwise specifically provided in this chapter, nonconforming situations that were otherwise lawful on the effective date of this chapter may be continued, subject to the restrictions and qualifications set forth in Sections 16-8.2 and 16-8.9. Nonconforming projects may be completed only in accordance with the provisions of Section 16-8.8.

**Section 16-8.2. Nonconforming Lots.** This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. A change in use of a developed nonconforming lot may be accomplished in accordance with Section 16-8.5.

**16-8.2.1.** When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimums set forth in Section 16-12.1, then the lot may be used as proposed just as if it were conforming. However, no use (e.g., a two-family residence) that requires a greater lot size than the established minimum lot size for a particular zone is permissible on a nonconforming lot.

**16-8.2.2.** When the use proposed for a nonconforming lot is one that is conforming in all other respects, but the applicable setback requirements (Section 16-12.4) cannot reasonably be complied with, then the entity authorized by this chapter to issue a permit for the proposed use, (the administrator or Board of Commissioners) may allow deviations from the applicable setback requirements if it finds that:

- a) The property cannot reasonably be developed for the use proposed without such deviations;
- b) These deviations are necessitated by the size or shape of the nonconforming lot; and
- c) The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.

**16-8.2.3.** For purposes of Section 16-8.2.2 compliance with applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, mere financial hardship does not constitute grounds for finding that compliance is not reasonably possible.

**16-8.2.4.** If, on the date this section becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor a successor in interest may take advantage of the provisions of this section. This subsection shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where such lot is located and within 500 feet of such lot are also nonconforming. The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require

such combination when that would be out of character with the way the neighborhood has previously been developed.

**Section 16-8.3. Extension or Enlargement of Nonconforming Situations.** Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

- a) An increase in the total amount of space devoted to a nonconforming use; or
- b) An increase in nonconformity. For the purposes of this Article, an increase in nonconformity shall refer to any improvement or expansion which contravenes the density, dimensional or other requirements of the Land Use Ordinance. Structures or portions of structures which are nonconforming may not be extended or expanded in any fashion.

EXPLANATORY NOTE: For purposes of illustration, and not limitation, a deck, or any portion thereof, which is nonconforming for failing to comply with applicable setback requirements may not be altered so as to make it a porch as that would constitute an increase in nonconformity. Neither shall a nonconforming porch be altered to create an enclosed space with the exception that mesh screening may be added.

**16-8.3.1.** Subject to Section 16-8.3.3 a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this chapter, was manifestly designed or arranged to accommodate such use. However, subject to Section 16-8.7 (authorizing the completion of nonconforming projects in certain circumstances), a nonconforming use may not be extended to additional buildings or to land outside the original building.

EXCEPTION: If a nonconforming use of land is due to a property having a single-family residence with an accessory apartment, then the principal structure may be expanded, and other accessory structures may be constructed as long as the accessory apartment or additional dwelling unit is not expanded in any way. Further, no expansion of the principal structure shall result in enlargement of a nonconforming situation with respect to setbacks or building height.

**16-8.3.2.** Subject to Section 16-8.7 (authorizing the completion of nonconforming projects in certain circumstances), a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., a sand pit) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming if ten percent or more of the earth products had already been removed at the effective date of this chapter.

**16-8.3.3.** Notwithstanding Section 16-8.3, any structure used for single-family residential purposes may be replaced with a similar structure, so long as the replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements. (For example, a single-story dwelling that

encroaches into one or more applicable setbacks may be replaced within the previous building footprint. However, a second story may only be built if the applicable setbacks are met.) This paragraph is subject to the limitations stated in Section 16-8.6 (abandonment and discontinuance of nonconforming situations).

**16-8.3.4.** Notwithstanding Section 16-8.3 whenever:

- a) there exists a lot with one or more structures on it; and
- b) a change in use that does not involve any enlargement of a structure is proposed for such lot; and
- c) the parking requirements of Article 20 that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for parking, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable parking requirements that can be satisfied without acquiring additional land, and shall also be required to obtain satellite parking in accordance with Section 16-20.11 if:
  - 1) Parking requirements cannot be satisfied on the lot with respect to which the permit is required; and
  - 2) Such satellite parking is reasonably available. If such satellite parking is not reasonably available at the time the zoning or special use permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the permit.

**16-8.3.5. Historic Properties.** Notwithstanding the limitations contained in Section 16-8.3 above, certain historic properties on which one or more nonconforming uses are taking place may be permitted to expand the structures and other facilities, such as patios, vehicular use areas, and the like, pertaining to said nonconforming uses by means of a special use permit as specified herein.

**16-8.3.5.1** The exception contained herein applies only to any property which is listed as a landmark on the National Register of Historic Places or listed as a contributing property in an historic district listed on the National Register of Historic Places and on which a nonconforming use has taken place continuously since prior to the effective date of the Land Use Code. For purposes of this paragraph, the effective date of the Land Use Code shall be the date the use was first rendered nonconforming.

**16-8.3.5.2.** The owner of an historic property, as defined herein, may apply for a special use permit to expand the structures and facilities associated with a nonconforming use in accordance with the procedures and standards contained in section 16-4.1.9, above. The following standards, in addition to those contained in 16-4.1.9, shall govern issuance of such permit:

- a) Any expansion shall comply with the development and dimensional standards, such

as setbacks, building height, signage, etc., of the zoning classification in which the property is situated.

- b) Any expansions of the existing structure shall not cumulatively exceed 50 percent of the gross floor area of the structure as of the effective date of this ordinance, or the effective date the property qualifies for the historical designation as specified in section-8-3.5.1
- c) Any expansion shall be congruous with the special historic character of the existing structure.

**Section 16-8.4. Repair, Maintenance and Reconstruction.** Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged and may require a zoning permit or special use permit. Major renovation may be done only in accordance with a Zoning permit issued pursuant to this section. Major renovation takes place when the costs of renovation would exceed fifty percent of the appraised valuation of the existing structure.

**16-8.4.1.** If a structure located on a lot where a nonconforming situation exists is damaged by fire, natural disaster, or act of God, to an extent that the costs of repair or replacement would exceed fifty percent of the appraised valuation of the pre-damaged structure, then the damaged structure may be repaired or replaced only in accordance with a zoning permit or special use permit issued pursuant to this section. A structure damaged by fire, natural disaster, or act of God, may be built back to the existing building footprint and may be enlarged as provided in Section 16-8.3. This subsection does not apply to structures used for single-family residential purposes, which structures may be reconstructed pursuant to a zoning permit just as they may be enlarged or replaced as provided in Section 16-8.3.4. For purposes of this section:

- a) The "cost" of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation, repair, or replacement.
- b) The "cost" of renovation or repair or replacement shall mean the total cost of all such intended work, and no person may seek to avoid the intent of Section 16-8.4 or Section 16-8.4.1 by doing such work incrementally.
- c) The "appraised valuation" shall mean either the appraised valuation for property tax purposes, updated as necessary by the Watauga County tax model since the date of the last valuation, or the valuation determined by a North Carolina licensed general appraiser.
- d) Sections 16-8.4 and Section 16-8.4.1 do not apply to structures located in a designated Flood Hazard Area. The repair, maintenance, or reconstruction of structures in a Flood Hazard Area may only be completed pursuant to Article 16 Flood Damage Prevention, of this chapter.

**16-8.4.2.** The permit-issuing authority shall issue a permit authorized by this section if it finds the following to be true.

**16-8.4.2.1.** In completing the renovation, repair or replacement work;

- a) no violation of Section 16-8.3 will occur, and
- b) the permittee will comply to the extent reasonably possible with all provisions of this chapter applicable to the existing structure and use.

**16-8.4.2.2.** This subsection does not apply to structures used for single-family residential purposes, which structures may be reconstructed pursuant to a zoning permit just as they may be enlarged or replaced as provided in Section 16-8.3.3. Also, the application of this subsection shall not cause a permittee to lose their right to continue a nonconforming use.

**16-8.4.2.3.** Compliance with a requirement of this chapter is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible.

**Section 16-8.5. Change in Use of Property Where a Nonconforming Situation Exists.** A change in use of property that is sufficiently substantial to require a new zoning, or special use permit, in accordance with section 16-4.1.1, may not be made except in accordance with this section. However, these requirements shall not apply if only a sign permit is needed.

**16-8.5.1.** If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this chapter applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this chapter is achieved, the property may not revert to its nonconforming status.

**16-8.5.2.** If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this chapter applicable to that use cannot reasonably be complied with, then the change is permissible if the entity authorized by this chapter to issue a permit for that particular use (the Administrator or Board of Commissioners) issues a permit authorizing the change. This permit may be issued if the permit-issuing authority finds, in addition to any other findings that may be required by this chapter, that:

- a) The intended change will not result in a violation of section 8-3; and
- b) All of the applicable requirements of this chapter that can reasonably be complied with will be complied with.

Compliance with a requirement of this chapter is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. And in no case may an applicant be given permission pursuant to this subsection to construct a

building or add to an existing building if additional nonconformities would thereby be created.

**16-8.5.3.** If the intended change in use is to another principal use that is also nonconforming, then the change is permissible if the entity authorized by this chapter to issue a permit for that particular use (Administrator or Board of Commissioners) issues a permit authorizing the change. The permit-issuing authority may issue the permit if it finds, in addition to other findings that may be required by this chapter, that:

- a) The use requested is one that is permissible in some zoning district with either a zoning, or special use, permit; and
- b) All of the conditions applicable to the permit are satisfied; and
- c) The proposed development will have less of an adverse impact on those most affected by it and will be more compatible with the surrounding neighborhood than the use in operation at the time the permit is applied for.

**Section 16-8.6. Abandonment and Discontinuance of Nonconforming Situations.** When a nonconforming use is (a) discontinued for a consecutive period of 180 days, or (b) discontinued for any period of time without a present intention to reinstate the nonconforming use, the property involved may thereafter be used only for conforming purposes.

**16-8.6.1.** If the principal activity on property where a nonconforming situation other than a nonconforming use exists is (a) discontinued for a consecutive period of 180 days, or (b) discontinued for any period of time without a present intention of resuming that activity, then that property may thereafter be used only in conformity with all of the regulations applicable to the preexisting use unless the entity with authority to issue a permit for the intended use issues a permit to allow the property to be used for this purpose without correcting the nonconforming situations. This permit may be issued if the permit-issuing authority finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.

**16-8.6.2.** For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for 180 days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

**16-8.6.3.** When a structure or operation made nonconforming by this chapter is vacant or discontinued at the effective date of this chapter, the 180-day period for purposes of this section begins to run at the effective date of this chapter.

**Section 16-8.7. Completion of Nonconforming Projects.** All nonconforming projects on which construction was begun at least 180 days before the effective date of this chapter as well as all nonconforming projects that are at least twenty-five percent completed in terms of the total expected cost of the project on the effective date of this chapter may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this subsection shall apply only to the particular phase under construction.

**16-8.7.1.** Except as provided in section 16-8.7 all work on any nonconforming project shall cease on the effective date of this chapter, and all permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a zoning, special use, or sign permit issued in accordance with this section by the individual or board authorized by this subchapter to issue permits for the type of development proposed. The permit-issuing authority shall issue such a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed their position in some substantial way in reasonable reliance on the land use law as it existed before the effective date of this chapter and thereby would be unreasonably prejudiced if not allowed to complete the project as proposed. In considering whether these findings may be made, the permit-issuing authority shall be guided by the following, as well as other relevant considerations.

**16-8.7.1.1.** All expenditures made to obtain or pursuant to a validly issued and unrevoked building, zoning, sign, or special use permit shall be considered as evidence of reasonable reliance on the land use law that existed before this chapter became effective.

**16-8.7.1.2.** Except as provided in Section 16-8.7.1.1, no expenditures made more than 180 days before the effective date of this chapter may be considered as evidence of reasonable reliance on the land use law that existed before this chapter became effective. An expenditure is made at the time a party incurs a binding obligation to make that expenditure.

**16-8.7.1.3.** To the extent that expenditures are recoverable with a reasonable effort, a party shall not be considered prejudiced by having made those expenditures. For example, a party shall not be considered prejudiced by having made some expenditure to acquire a potential development site if the property obtained is approximately as valuable under the new classification as it was under the old, for the expenditure can be recovered by a resale of the property.

**16-8.7.1.4.** To the extent that a nonconforming project can be made conforming and that expenditures made, or obligations incurred can be effectively utilized in the completion of a conforming project, a party shall not be considered prejudiced by having made such expenditures.

**16-8.7.1.5.** An expenditure shall be considered substantial if it is significant both in dollar amount and in terms of (a) the total estimated cost of the proposed project, and (b) the ordinary business practices of the developer.

**16-8.7.1.6.** A person shall be considered to have acted in good faith if actual knowledge of a proposed change in the land use law affecting the proposed development site could not be attributed to him.

**16-8.7.1.7.** Even though a person had actual knowledge of a proposed change in the land use law affecting a development site, the permit-issuing authority may still find that he acted in good faith if he did not proceed with the plans in a deliberate attempt to circumvent the effects of the proposed ordinance. The permit-issuing authority may find that the developer did not proceed in an attempt to undermine the proposed ordinance if it determines that (a) at the time the expenditures were made, either there was considerable doubt about whether any ordinance would ultimately be passed, or it was not clear that the proposed ordinance would prohibit the intended development, and (b) the developer had legitimate business reasons for making expenditures.

**16-8.7.2.** The permit-issuing authority shall not consider any application for the permit authorized by Section 16-8.7.1 that is submitted more than sixty days after the effective date of this chapter. The permit-issuing authority may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one year.

**16-8.7.3.** The administrator shall send copies of this section to the persons listed as owners for tax purposes (and developers, if different from the owners) of all properties in regard to which permits have been issued for nonconforming projects or in regard to which a nonconforming project is otherwise known to be in some stage of development. This notice shall be sent by certified mail not less than fifteen days before the effective date of this chapter.

**16-8.7.4.** The permit-issuing authority shall establish expedited procedures for hearing applications for permits under this section. These applications shall be heard, whenever possible, before the effective date of this chapter so that construction work is not needlessly interrupted.

**16-8.7.5.** When it appears from the developer's plan or otherwise that the nonconforming project was intended to be or reasonably could be completed in stages, segments, or other discrete units, the permit-issuing authority shall not allow the nonconforming project to be constructed or completed in a fashion that is larger or more extensive than is necessary to allow the developer to recoup and obtain a reasonable rate of return on the expenditures he has made in connection with that nonconforming project.

**Section 16-8.8. Nonconforming Signs.** Subject to the remaining restrictions of this section, nonconforming signs that were otherwise lawful on the effective date of this Article may be continued until they are required to be removed under Section 16-8.9. Where the term "message" is used herein, it shall not apply to the changeable copy on the message board portion of any sign.

**16-8.8.1.** Existing signs that do not conform to the provisions of this Article shall not be enlarged, extended, reconstructed, structurally altered, redesigned, replaced, or modified in

any way, nor may illumination be added to any nonconforming sign.

**16-8.8.2.** A nonconforming sign may be continued so long as it is kept in good repair and maintained in safe condition.

**16-8.8.3.** A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this Article.

**16-8.8.4.** The sign face or display area of a nonconforming sign, other than a billboard, may not be changed unless the sign is brought into compliance with the provisions of this Article. The sign face or display area of a nonconforming billboard may be changed, subject to the other provisions of this Article.

**16-8.8.5.** If a nonconforming sign is severely damaged or destroyed, it may not thereafter be repaired, reconstructed, or replaced except in conformity with all of the provisions of this Article, and the remnants of the former sign structure shall be cleared from the land. For the purposes of this subsection, a nonconforming sign is “severely damaged or destroyed” if the estimated cost of repairing the sign to its former stature is greater than 50% of the value of the sign so damaged.

**16-8.8.6.** Subject to the other provisions in this section, nonconforming signs may be repaired and renovated so long as the cost of the work does not exceed 50% of the value of the sign within any 12-month period.

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## **Article 9 – Zoning Districts and Zoning Map**

**Section 16-9.1. Residential Districts Established.** The following residential districts are hereby established: R-A, R-15, R-10S, R-10D, R-10M, R-6S, R-6M, and R-MH. Each of these districts is designed and intended to secure for the persons who reside there a comfortable, healthy, safe, and pleasant environment in which to live, sheltered from incompatible and disruptive activities that properly belong in nonresidential districts. Other objectives of some of these districts are explained in the remainder of this section.

- a) The R-A (Residential-Agriculture) district is designed to accommodate residential uses and a wide variety of plant and animal-related uses but excluding those uses that would have the potential of creating a nuisance for adjoining or adjacent residential uses.
- b) The R-15 district is intended to be a low-density residential district in which single family residences constitute the predominant use. Multifamily dwellings and mobile homes are prohibited in this district.
- c) The R-10S district is intended to be a medium density residential district in which single family residences constitute the predominant use. Multifamily dwellings and mobile homes are prohibited in this district.
- d) The R-10D district is intended to be a medium density residential district in which two family residences constitute the predominant use.
- e) The R-10M district is intended to be a medium density residential district in which multifamily residences constitute the predominant use.
- f) The R-6S district is intended to be a higher density residential district in which single family residences constitute the predominant use. Multifamily dwellings and mobile homes are prohibited in this district.
- g) The R-6M district is intended to be a higher density residential district in which two-family and multi-family residences constitute the predominant use.
- h) The R-MH district is designed primarily to accommodate mobile homes and mobile home parks.

**Section 16-9.2. Nonresidential Districts Established.** The following nonresidential districts are hereby established: CB (Central Business), TC (Town Center), GB (General Business), OI (Office/Institutional), HMC (Hospital/Medical Complex), HSG (Horse Show Grounds), PGS (Parks and Green Space). These districts are created to accomplish the purposes and serve the objectives set forth in the remainder of this section.

- a) The CB district is designed to accommodate a wide variety of commercial activities (particularly those that are pedestrian oriented) that will result in the most intensive and attractive use of the town's central business district.
- b) The GB district is designed to accommodate the widest range of commercial activities permitted within the town, particularly those that are automobile oriented.
- c) The OI district is designed to accommodate a narrow range of commercial and institutional activities, including offices, schools, churches, libraries, clubs and lodges, and government buildings.

- d) The HMC district is designed to accommodate the hospital and related offices and facilities that are designed to provide a continuum of care, including facilities that provide independent living, assisted living/CCRC, home health care, adult day care, intermediate care, skilled nursing care, and acute care.
- e) The HSG district is designed to accommodate equestrian activities such as horse shows.
- f) The PGS district is designed to accommodate public and private outdoor recreational facilities, including parks, trails, athletic fields, golf courses, tennis courts, swimming pools, etc.
- g) The TC district is designed to accommodate a wide variety of commercial activities (particularly those that are pedestrian oriented) that will result in the most intensive and attractive use of the town's central business district, while protecting the historic character of the downtown core primarily along Main Street.

### **Section 16-9.3. Overlay Districts.**

**16-9.3.1. Short-Term Rental Overlay District.** The purpose of the short-term rental overlay district is to provide areas within the underlying multi-family residential zoning districts that are appropriate for short-term residential rental uses. As an overlay district, the Short-Term Rental Overlay District does not replace or restrict the range of uses allowed in the underlying zoning district but allows for additional uses within the boundaries of the overlay district.

- a) *Designation of Overlay District.* Following approval by the Board of Commissioners of an area to be included in the Short-Term Rental Overlay District, the area so designated shall be labeled as "STR" on the Official Zoning Map.
- b) *Permitted Uses.* In addition to the uses permitted within the underlying zoning district, short-term rental of a dwelling unit is allowed within the Short-Term Rental Overlay District.
- c) *Adoption Criteria.* A Short-Term Rental Overlay District may be established if the proposed map amendment application meets the following standards, criteria, and conditions:
  - 1) The map amendment may only be initiated by the Board of Commissioners, the Planning Board, the Town Administration, or an owner of property located within the proposed district. Unless a map amendment is Town-initiated (by the Board of Commissioners, the Planning Board, or the Town Administration), an application for a map amendment must be endorsed by a majority of the property owners of all lots, parcels, and units to be included within the boundary area of the proposed map amendment. Third party downzoning is prohibited per S.L. 2019-111, Pt. I. The public notice, public hearing, and procedural requirements for the map amendment shall be as provided in Article 23.
  - 2) The area proposed for the short-term rental district must be located within an existing R-10M or R-6M zoning district.
  - 3) The area proposed for the short-term rental district may only include an existing or proposed multi-family residential complex that has a homeowner's or property owner's association with the authority to regulate or manage short-term rental uses

within the complex.

- 4) The proposed short-term rental use must be compatible with established land uses in the immediate vicinity of the lots or parcels to be designated STR.
- 5) The proposed short-term rental use will not result in so many additional vehicle trips that adverse traffic impacts will be felt upon the streets and within the neighborhoods bordering the proposed STR district.
- 6) In addition to the requirements contained in Article 22 (Screening and Trees), the Council may require that the STR district be screened from any other adjacent residential use if it finds that any existing screening is inadequate or that there is insufficient separation between the proposed STR district and the adjacent residential uses.

**16-9.3.2. Floodplain and Floodway Districts.** The floodplain and floodway districts are hereby established as “overlay” districts, meaning that the following districts are overlaid upon other districts and the land so encumbered may be used in a manner permitted in the underlying district only if and to the extent such use is also permitted in the applicable overlay district. The floodplain and floodway districts are further described in Section 16-16 of this chapter.

**Section 16-9.4. Official Zoning Map.** There shall be a map known and designated as the Official Zoning Map, which shall show the boundaries of all zoning districts within the city’s planning jurisdiction. This map is maintained in digital format on the Town of Blowing Rock GIS. Amendments to the map are filed with the Town Clerk and may be found in the minutes of the Board of Commissioners.

**Section 16-9.5. Amendments to Official Zoning Map.** Amendments to the Official Zoning Map are accomplished using the same procedures that apply to other amendments to this chapter, as set forth in Article 23.

**16-9.5.1.** The administrator shall update the Official Zoning Map as soon as possible after amendments to it are adopted by the Board. Upon entering any such amendment on the map, the administrator shall change the date of the map to indicate its latest revision.

**16-9.5.2.** No unauthorized person may alter or modify the Official Zoning Map.

**16-9.5.3.** The administrator shall keep copies of superseded prints of the zoning map for historical reference and make available for public inspection in accordance with NCGS 160D-105.

**Section 16-9.6. Conditional Districts (CD).** Conditional districts are districts with conditions voluntarily added by the applicant and approved in a legislative procedure by the Board of Commissioners in accordance with NCGS 160D-703. Conditional districts provide for orderly and flexible development under the general policies of this Ordinance without the constraints of some of the prescribed standards guiding “by right” development. Conditional districts may be associated with any land development district and shall be designated by adding the suffix “CD”

to the land development district with which they are associated. Conditional districts are not intended to relieve hardships that would otherwise be handled using a variance procedure.

**16-9.6.1. Application Procedures**

**16-9.6.1.1 Applicant and Property.** Conditional district classification shall only be considered upon the request of the owners and/or the representatives of the owners of all the property to be included. A CD shall consist of land under unified control which may be planned and developed as a single development or as an approved programmed series of development phases by multiple developers. “Unified control” means that all land to be included within a CD shall be owned or otherwise under the legal control of the person or legal entity which has applied for a conditional district. Such person or entity shall be legally capable of providing a commitment to the town that the CD development will comply with all documents, plans, standards and conditions ultimately approved by the town.

**16-9.6.1.2. Standards of District to be Met.** Within an approved conditional district, no use shall be permitted except pursuant to the conditions imposed by the applicant on the conditional district in the approval of the rezoning. In general, the development standards for the associated land development district, as well as general standards contained in this chapter, shall govern development within the conditional district. However, within a conditional district petitioner may place additional requirements or standards onto themselves and their property or ask that certain uses identified in the associated district be decreased. In addition, specific development standards (except those involving use), may be varied if specifically requested by the petitioner as part of a conditional district application.

If no specific request is made by the petitioner to change the applicable development standards or if the petition is silent on the point, it shall be understood that all applicable development standards shall govern the development and use of the property.

**16-9.6.1.3. Contents of Application.** A conditional district application shall consist of the master plan, as provided for herein, as well as any other plans, drawings, renderings, elevations, maps and documents specifically included as development documents for approval by the Board of Commissioners. The master plan, as a site-specific conditional zoning plan, is itself a condition of the conditional district rezoning. The master plan shall include those existing environmental features (i.e., significant/historic trees, watercourses, rock outcroppings) required on application forms and checklists provided by the Land Use Administrator. Additional application details are found in Section 16-4.4 of this Chapter.

- a) **Master plan.** The master plan is intended to provide a detailed two-dimensional drawing that illustrates all of the required site features including buildings, parking areas, streets locations, street sections, rights-of-way, property lines and setbacks, required or proposed watercourse buffers, site landscaping and lighting (in conceptual form), and all related development calculations (e.g., density, proposed building areas, number of parking spaces, estimate impervious surface) in sufficient

detail to show compliance with this ordinance. Detailed engineering drawings such as subsurface utilities (e.g., water and sewer) and on-site stormwater facilities are not required for master plans. All plans shall be submitted at a scale not less than 1 inch = 50 feet (for site plans) or 1 inch = 200 feet (for subdivisions) unless otherwise authorized by the Administrator and shall, at a minimum, consist of the following:

- 1) The overall boundary and area of the district, including underlying zoning districts;
- 2) The general location, orientation and size of principal structures and associated parking areas; landscape and buffer areas; open space areas; the location, size and general treatment of environmentally sensitive areas; the general location and size of existing and proposed water mains and sewer trunk lines required to service the development; and general traffic routes (external and internal) to and from the development with major access points identified;
- 3) Tabular data, including the range and scope of proposed land uses, proposed densities, floor area ratios or impervious surface ratios as applicable to development type; and land areas devoted to each type of general land use and phase of development;
- 4) A full list of proposed uses consistent in character with the underlying zoning district. Such use classifications may be selected from any of the uses, whether permitted, by right or conditional, allowed in the general zoning district upon which the conditional district is based. Uses not otherwise permitted within the general zoning district shall not be permitted within the conditional district;
- 5) A proposed development schedule if the project is to be phased.

**16-9.6.2. Formal Review.**

**16-9.6.2.1. Procedure.** Formal review shall be in accordance with the procedures contained in Section 16-23.1, "Amendments", except as modified herein.

**16-9.6.2.2. Site-Specific Development Plan.** Conditional zoning is intended to link map amendments with a specific development plan and uses; therefore, the limitations contained in Section 16-10.5 concerning the range of uses proposed shall not apply.

**16-9.6.2.3. Fair and Reasonable Conditions.** The provisions of the Master plan shall replace all conflicting development regulations set forth in this Chapter which would otherwise apply to the development site. The Board of Commissioners may attach, reasonable and appropriate conditions including, but not limited to, the location, nature, hours of operation, and extent of the proposed use(s); provided, however, only those conditions mutually approved in writing by the Town and the applicant may be incorporated into the permit requirements for the conditional district. Conditions and site-specific standards shall be limited to those that address conformance of the development and use of the site to the Land Use Code and officially adopted plans and those standards and conditions that address the impacts reasonably expected to be generated by the development and use of the site. The applicant will have a reasonable opportunity to consider and respond to any additional requirements proposed by either the Planning Board or the Board of Commissioners prior to final action.

**19-9.6.3. Effect of Approval/Changes.** The applicant may proceed with development only after approval of the conditional district master plan by the Board of Commissioners, followed by approval of any necessary Site plans or subdivision plat, except that all subsequent approvals shall be completed by the Administrator. The development and use of all land within the conditional district shall be in keeping with the approved master plan and all applicable provisions therein.

**19-9.6.3.1. Final Approval by Stages.** If so, reflected on the master plan, the Board of Commissioners may allow the staging of final development. Each phase of development shall adhere to all applicable provisions and standards of this section and the applicable CD master plan.

**16-9.6.3.2. Substantial Changes.** Any substantial change to a master plan as noted below shall be reviewed by the Planning Board and approved or denied by the Board of Commissioners as an amended conditional district. The following changes to a CD master plan shall require approval by the Board of Commissioners:

- a) Land area being added or removed from the conditional district.
- b) Modification of special performance criteria, design standards, or other requirements specified by the enacting ordinance.
- c) A change in land use or development type beyond that permitted by the approved master plan.
- d) When there is introduction of a new vehicular access point to an existing street, road or thoroughfare not previously designated for access.
- e) When there is an increase in the total number of residential dwelling units originally authorized by the approved master plan.
- f) When the total floor area of a commercial or industrial classification is increased more than 10 percent beyond the total floor area last approved by Board of Commissioners.

**16-9.6.3.3. Additional Changes.** All other changes to a CD Master plan shall receive approval by the Planning Board. However, if in the judgment of the Planning Board, the requested changes alter the basic development concept of the CD, the Planning Board may require concurrent approval by the Board of Commissioners.

**16-9.6.3.4. Rescission of Conditional Districts.** The applicant shall secure a valid building permit or obtain approval of a site-specific development plan within a 12-month period from date of approval of the conditional district unless otherwise specified. If such project is not complete or a valid building permit or an approved site-specific development plan is not in place at the end of the 12-month period, the Administrator shall notify the applicant of such finding. Within sixty (60) calendar days of notification, the Administrator shall make a recommendation concerning the rescission of the conditional district to the Board of Commissioners. The Board of Commissioners may then rescind the conditional district or extend the life of the conditional district for a specified period of time. The rescission of a conditional district shall follow the same procedure as used for approval.

## Article 10 – Permissible Uses

**Section 16-10.1. Table of Permissible Uses.** The Table of Permissible Uses herein should be read in close conjunction with the definitions of terms set forth in Section 16-2 and the other interpretative provisions set forth in this article.

**Section 16-10.2. Use of the Designations Z and S in Table of Permissible Uses.**

**16-10.2.1.** Subject to Section 16-10.3, when used in connection with a particular use in the Table of Permissible Uses herein, the letter “Z” means that the use is permissible in the indicated zone with a zoning permit issued by the administrator. The letter “S” means a special use permit must be obtained from the Board of Commissioners.

**16-10.2.3.** Subject to Section 16-10.3, use of the designation “ZS” means that a zoning permit must be obtained if the development is located on a lot of one acre or less while a special use permit, respectively, must be obtained for all developments on lots in excess of one acre.

**16-10.2.4.** Use of the designation “Z” and “S” for combination uses is explained in Section 16-10.10.

**Section 16-10.3. Board of Commissioners Jurisdiction Over Uses Otherwise Permissible With a Zoning Permit.** Notwithstanding any other provisions of this article, whenever the *Table of Permissible Uses* (interpreted in the light of Section 16-10.2 and the other provisions of this article) provides that a use in a non-residential zone is permissible with a zoning permit, a special use permit shall be required if the administrator finds that the proposed use would have an extraordinary impact on neighboring properties or the general public. In making this determination, the administrator shall consider, among other factors, whether the use is proposed for an undeveloped or previously developed lot, whether the proposed use constitutes a change from one principal use classification to another, whether the use is proposed for a site that poses peculiar traffic or other hazards or difficulties, and whether the proposed use is substantially unique or is likely to have impacts that differ substantially from those presented by other uses that are permissible in the zoning district in question.

**Section 16-10.4. Zoning Administrator Jurisdiction Over Uses Otherwise Permissible with SUP.** Notwithstanding any other provisions of this article, whenever the Table of Permissible Uses (interpreted in the light of Section 16-10.2 and other provisions of this article) provides that a use in the CB, GB, or OI zoning district is permissible with special use permit, only a zoning permit shall be required instead if the administrator determines that the new use involves no more than a change from one business to another, that no new substantial construction is involved, and that the change in use would have a negligible adverse impact on neighboring property and the public health and safety.

**Section 16-10.5. Permissible Uses and Specific Exclusions.** The presumption established by this chapter is that most legitimate uses of land are permissible within at least one zoning district in the town’s planning jurisdiction. Therefore, because the list of permissible uses set forth in herein, (Table of Permissible Uses) cannot be all-inclusive, those uses that are listed may be interpreted to include other uses that have similar impacts to the listed uses.

**16-10.5.1.** Section 16-10.1 (*Table of Permissible Uses*) shall not be interpreted to allow a use in one zoning district when the use in question is more closely related to another specified use that is permissible only in other zoning districts.

**16-10.5.2.** Without limiting the generality of the foregoing provisions, the following uses are specifically prohibited in all districts:

- a) Use of travel trailer as a residence.
- b) The use of any motor vehicle (as defined in Section 6-1 of the ~~town~~ Code), parked on a lot, as a structure in which, out of which or from which any goods are sold or stored, any service is performed, or other business (as defined in Section 8-1 of the ~~town~~ Code) is conducted, except that retail sales of food products and goods manufactured, created or produced by the seller shall not be prohibited by this subdivision. Notwithstanding any other provision of this chapter, situations that exist on the effective date of this chapter that are in violation of this section shall not be regarded as lawful nonconforming situations thirty days after the effective date of this chapter.
- c) The installation, erection, or use of a wind energy system, wind turbines, and/or associated towers for wind energy conversion.

**16-10.5.3.** Agricultural uses are exempt from zoning regulations in the town's ETJ as provided by NCGS 160D-903. Property used for bona fide farm purposes include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in NCGS 106-581.1.

**Section 16-10.6. Accessory Uses.** The Table of Permissible Uses classifies different principal uses according to their different impacts. Whenever an activity (which may or may not be separately listed as a principal use in this table) is conducted in conjunction with another principal use and the former use (i) constitutes only an incidental or insubstantial part of the total activity that takes place on a lot, or (ii) is commonly associated with the principal use and integrally related to it, then the former use may be regarded as accessory to the principal use and may be carried on underneath the umbrella of the permit issued for the principal use. For example, a swimming pool/tennis court complex is customarily associated with and integrally related to a residential subdivision or multifamily development and would be regarded as accessory to such principal uses.

**16-10.6.1.** For purposes of interpreting section 16-10.4:

- a) A use may be regarded as incidental or insubstantial if it is incidental or insubstantial in and of itself or in relation to the principal use;
- b) To be "commonly associated" with a principal use it is not necessary for an accessory use to be connected with such principal use more times than not, but only that the association of such accessory use with such principal use takes place with sufficient frequency that there is common acceptance of their relatedness.

**16-10.6.2.** Without limiting the generality of section 16-10.6.1 the following activities are specifically regarded as accessory to residential principal uses so long as they satisfy the general criteria set forth above:

- a) Offices or studios within an enclosed building and used by an occupant of a residence located on the same lot as such building to carry on administrative or artistic activities of a commercial nature, so long as such activities do not fall within the definition of a home occupation.
- b) Hobbies or recreational activities of a non-commercial nature.
- c) The renting out of one or two rooms within a single-family residence (use classification 1.110 or 1.120) (which one or two rooms do not themselves constitute a separate dwelling unit) to not more than two persons who are not part of the family that resides in the single-family dwelling.
- d) Yard sales or garage sales, so long as such sales are not conducted on the same lot for more than three days (whether consecutive or not) during any 365-day period. Sales conducted in excess of these limitations shall be regarded as commercial activity that is unlawful in residential zones.

**16-10.6.2.1. Beekeeping.** The keeping of bees as accessory use requires a zoning permit to establish initial compliance with the following requirements:

- a) No lot may contain more than four (4) hives.
- b) Hives shall be placed no closer than 10 feet from a property line and shall face the interior of the property. The Administrator may allow setback deviations on hive placement based on site topography.
- c) A water source must be provided.
- d) A bait hive must be placed 10-30 feet away and at least ten feet above the hives.

**16-10.6.3.** Without limiting the generality of section 16-10.6.1 the following activities shall not be regarded as accessory to a residential principal use and are prohibited in residential districts:

- a) Storage outside of a substantially enclosed structure of any motor vehicle that is neither licensed nor operational.
- b) Parking outside a substantially enclosed structure of more than four motor vehicles between the front building line of the principal building and the street on any lot used for purposes that fall within the following principal use classifications: 1.100, 1.200, 1.420, or 1.430.

**Section 16-10.7. Permissible Uses Not Requiring Permits.** Notwithstanding any other provisions of this chapter, no zoning or special use permit is necessary for the following uses:

- a) Streets.
- b) Electric power, telephone, telegraph, cable television, gas, water, and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right of way.
- c) Neighborhood utility facilities located within a public right of way with the permission of the owner (state or town) of the right of way.

**Section 16-10.8. Change in Use.** A substantial change in use of property occurs whenever the essential character or nature of the activity conducted on a lot changes. This occurs whenever:

- a) The change involves a change from one principal use category to another.

- b) The original use is a combination use (29.000) or planned unit development (30.000), the relative proportion of space devoted to the individual principal uses that comprise the combination use or planned unit development use changes to such an extent that the parking requirements for the overall use are altered.
- c) If the original use is a combination use or planned unit development use, the mixture of types of individual principal uses that comprise the combination use or planned unit development use changes.
- d) If there is only one business or enterprise conducted on the lot (regardless of whether that business or enterprise consists of one individual principal use or a combination use), that business or enterprise moves out and a different type of enterprise moves in (even though the new business or enterprise may be classified under the same principal use or combination use category as the previous type of business). For example, if there is only one building on a lot and a florist shop that is the sole tenant of that building moves out and is replaced by a clothing store, that constitutes a change in use even though both tenants fall within principal use classification 2.110. However, if the florist shop were replaced by another florist shop, that would not constitute change in use since the type of business or enterprise would not have changed. Moreover, if the florist shop moved out of a rented space in a shopping center and was replaced by a clothing store, that would not constitute a change in use since there is more than one business on the lot and the essential character of the activity conducted on that lot (shopping center – combination use) has not changed.

**16-10.8.1.** A mere change in the status of property from unoccupied to occupied or vice-versa does not constitute a change in use. Whether a change in use occurs shall be determined by comparing the two active uses of the property without regard to any intervening period during which the property may have been unoccupied, unless the property has remained unoccupied for more than 180 consecutive days or has been abandoned.

**16-10.8.2.** A mere change in ownership of a business or enterprise or a change in the name shall not be regarded as a change in use.

**Section 16-10.9. Manufacturing/Processing, Etc. Uses.** The Board finds that the residential/resort character of the area within Blowing Rock’s planning jurisdiction is incompatible with the development of such area for uses within the 4.000 classification of the Table of Permissible Uses (manufacturing, processing, etc.) except to the extent that such uses create none of the negative impacts often associated with such manufacturing/processing uses. Therefore, no 4.000 classification use within any zoning district may:

- a) Emit from a vent, stock, chimney, or combustion process any smoke that is visible to the naked eye.
- b) Generate noise that tends to have an annoying or disruptive effect upon uses located outside the immediate space occupied by the 4.000 use if that use is one of several on the lot or uses located on adjacent lots.
- c) Generate any ground transmitted vibration that is perceptible to the human sense of touch measured at the outside boundary of the immediate space occupied by the enterprise generating the vibration if the enterprise is one of several located on a lot, or the lot line if

the enterprise generating the vibration is the only enterprise located on a lot.

- d) Generate any odor that reaches the “odor threshold” measured at the outside boundary of the immediate space occupied by the enterprise generating the odor, or the lot line if the enterprise generating the odor is the only enterprise located on a lot. For purposes of this subdivision, the “odor threshold” is defined as the minimum concentration in air of a gas, vapor, or particulate matter that can be detected by the olfactory systems of a panel of healthy observers.
- e) Require for its operations a daily average of more than 200 gallons of water per employee.
- f) Create any electrical disturbance that adversely affects any operations or equipment other than those of the creator of such disturbance, or otherwise causes, creates, or contributes to the interference with electronic signals (including television and radio broadcasting transmissions) to the extent that the operation of any equipment not owned by the creator of such disturbance is adversely affected.

**Section 16-10.10. Combination Uses.** When a combination use comprises two or more principal uses that require different types of permits (zoning or special use), then the permit authorizing the combination use shall be:

- a) A special use permit if any of the principal uses combined requires a special use permit.
- b) A zoning permit in all other cases.

This is indicated in the Table of Permissible Uses by the designation Z and S in each of the columns adjacent to the 29.000 classification.

**16-10.10.1.** Subject to Section 16-10.10.2 when a combination use in an R-6 or R-10 zoning district consists of a residential subdivision and a multi-family development, the total density permissible on the lot shall be determined by having the developer indicate on the plans the portion of the total lot that will be developed for each purpose and calculating the density for each portion as if it were a separate lot.

**16-10.10.2.** Notwithstanding Section 16-12.2.2 whenever a combination use consists of a standard residential subdivision and a multi-family development, and the subdivided portion of the tract contains lots that exceed the minimum lot size requirements set forth in Section 16-181, but that do not exceed an average of 30,000 square feet, then the density of the portion of the tract developed for multi-family purposes may be increased beyond the permissible density calculated in accordance with Section 16-10.10.1. The increase in density shall be determined as follows:

- a) The minimum lot size requirement for the applicable zoning district shall be subtracted from each lot that exceeds the minimum lot size, and the remainders totaled.
- b) The sum derived from the calculation in subdivision (1) shall be divided by the minimum lot size requirement. Fractions shall be rounded to the nearest whole number.
- c) The product of the calculation in subdivision (2) shall yield the number of additional multi-family dwelling units that may be located within the portion of tract developed for multi-family purposes.

**16-10.10.3.** When a residential use is combined with a non-residential use in a business district, the lot must have at least the minimum square footage required for the residential use alone.

**16-10.10.4.** When two principal uses are combined, the total amount of parking required for the combination use shall be determined by cumulating the amount of parking required for each individual principal use according to the relative amount of space occupied by that use.

**Section 16-10.11. More Specific Use Controls.** Whenever a development could fall within more than one use classification in the *Table of Permissible Uses*, the classification that most closely and most specifically describes the development controls. For example, a small doctor's office or clinic clearly falls within the 3.110 classification (Office and service operations conducted entirely indoors and designed to attract customers or clients to the premises). However, classification 3.130, "Physicians and dentists offices and clinics occupying not more than 10,000 square feet of gross floor area" more specifically covers this use and therefore is controlling.

**Section 16-10.12. Short-Term Rentals.** The Board finds that short-term rentals (STRs) are an appropriate use given the residential/resort character of Blowing Rock's planning jurisdiction, provided that specific controls are in place to regulate parking, trash, noise, tenant safety, and other related effects thereby protecting neighborhood property values, and the health, safety, and the general welfare of Town citizens and visitors.

Short-term rentals are defined as the rental, lease, or offer to make available, any attached or detached residential dwelling unit, or portion thereof, by way of a rental agreement, lease, license, or any other means, (whether oral or written) for compensation or consideration, for a duration that is less than 28 consecutive days. The following standards shall apply to all short-term rentals with the Town's planning jurisdiction:

- a) A zoning permit must be initially obtained for a change in use for each dwelling unit that is to be rented for a period of less than 28 days. The permit is not valid until a satisfactory inspection is completed.
- b) A local contact person or management company contact information must be clearly posted on the interior of the dwelling unit, and the person/company shall be available to respond to complaints or emergencies within one (1) hour.
- c) Sufficient off-street parking must be provided for each bedroom to be rented. The parking space must meet the minimum dimensional requirements in Section 16-20.6. Short-term rental units that exist on July 1, 2018, are grandfathered with respect to parking, but each bedroom added after this date requires an additional parking space.
- d) Adequate trash and recycling containers must be provided. If collection containers are kept in an enclosure bin, the bin must meet minimum design standards defined in the Town Code (ex. Placed within 6 to 12 feet of the edge of the street, opaque screening at least four feet high, etc.).
- e) The dwelling unit must be equipped with operable smoke detectors and carbon monoxide detectors consistent with the NC Building Code.
- f) The 911 address must be posted on the front of the house or dwelling unit with 3.5-inch reflective numbers (6-inch reflective number if commercial or multi-family) or on the

property according to Section 7-17 of the Town Code. The 911 address must be clearly posted on the interior of the dwelling unit to notify tenants in case of emergency.

**16-10.12.1.** In addition to those areas zoned to allow short-term rentals (CB, TC, GB, OI), there are other areas where short-term rentals are permissible including Chetola Resort and Royals Oaks Condominiums (Overlay District). There are other properties that were previously operating short-term rentals or had permitted vested rights through Watauga or Caldwell County prior to being annexed or added to the Extraterritorial Jurisdiction. These properties have a legal nonconforming status that provides the opportunity for short-term rental. Each property owner that applies for a zoning permit for short-term rental use in areas not permitted by right or listed herein must provide historical documentation that the nonconformity has been legally obtained or a vested right has been legally established under NCGS 160D-108.



**Table of Permissible Uses**

| Uses Description  | R-A | R-15 | R-10S | R-10D | R-10M | R-6S | R-6M | R-MH | CB | TC | GB | OI | HMC | HSG | PGS |
|---|-----|------|-------|-------|-------|------|------|------|----|----|----|----|-----|-----|-----|
| <b>1.000 Residential</b>  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>1.100 Single-family residences</b>                                     |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>1.110</b> Other than mobile homes                                      | Z   | Z    | Z     | Z     | Z     | Z    | Z    | Z    | Z  | Z  | Z  | Z  | Z   |     |     |
| <b>1.120</b> Manufactured homes   |     |      |       |       |       |      |      | Z    |    |    |    |    |     |     |     |
| <b>1.130</b> Single family residence with accessory apartment             | Z   |      | Z     | Z     | Z     | Z    | Z    |      | Z  | Z  | Z  | Z  | Z   |     |     |
| <b>1.200 Two-family residences</b>  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>1.210</b> Duplex   |     |      |       | Z     | Z     |      | Z    |      | Z  | Z  | Z  | Z  | Z   |     |     |
| <b>1.220</b> Two-family conversion  |     |      |       | Z     | Z     |      | Z    |      | Z  | Z  | Z  | Z  | Z   |     |     |
| <b>1.230</b> Townhouses   |     |      |       | Z     | Z     |      | Z    |      | Z  | Z  | Z  | Z  | Z   |     |     |
| <b>1.300 Multi-family residences</b>                                      |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>1.310</b> Other than mobile home parks                                 |     |      |       |       | S     |      | S    | S    | S  | S  | S  | S  |     |     |     |
| <b>1.320</b> Manufactured home parks                                      |     |      |       |       |       |      |      | S    |    |    |    |    |     |     |     |
| <b>1.330</b> Multi-family conversion                                      |     |      |       |       | S     |      | S    |      | S  | S  | S  | S  | Z   |     |     |
| <b>1.400 Homes emphasizing special services, treatment or supervision</b> |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>1.410</b> Homes for handicapped or infirm                              | Z   | Z    | Z     | Z     | Z     | Z    | Z    | Z    | Z  | Z  | Z  | Z  | Z   |     |     |
| <b>1.420</b> Nursing care, intermediate                                   |     |      |       |       | S     |      | S    |      |    |    |    |    | S   |     |     |
| <b>1.430</b> Child care homes   |     |      |       |       | S     |      | S    |      |    |    |    |    | S   |     |     |
| <b>1.440</b> Halfway house  |     |      |       |       |       |      |      |      |    |    |    |    | S   |     |     |
|   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |

*Town Code of Blowing Rock, North Carolina*

| Uses Description   | R-A | R-15 | R-10S | R-10D | R-10M | R-6S | R-6M | R-MH | CB | TC | GB | OI | HMC | HSG | PGS |
|--|-----|------|-------|-------|-------|------|------|------|----|----|----|----|-----|-----|-----|
| <b>1.450</b> Facilities that are designed to provide a continuum of care, including independent living, assisted living/CCRC, home health care, adult day care, intermediate care, skilled nursing care, and acute care; provided, however, that residential living units shall be limited to no more than seven units per acre. |     |      |       |       |       |      |      |      |    |    |    |    | S   |     |     |
| <b>1.500</b> Miscellaneous long-term rooms for rent situations   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>1.510</b> Rooming houses, boarding houses   | Z   |      | Z     | Z     | Z     | Z    | Z    |      | S  | S  | S  | S  | Z   |     |     |
| <b>1.520</b> Fraternities, sororities, and similar housing with ten beds or less   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>1.530</b> Dormitories, fraternities and sororities with more than ten beds, and similar housing   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>1.600</b> Temporary Residences  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>1.610</b> Temporary emergency construction and repair residences  | Z   | Z    | Z     | Z     | Z     | Z    | Z    | Z    |    |    | Z  | Z  | Z   |     |     |
| <b>1.620</b> Short-term rental of a residential dwelling unit  |     |      |       |       |       |      |      |      | Z  | Z  | Z  | Z  |     |     |     |
| <b>1.630</b> Hotels, motels, similar businesses or institutions providing overnight accommodations   |     |      |       |       |       |      |      |      | S  | S  | S  |    |     |     |     |
| <b>1.640</b> Bed and Breakfast establishments  |     |      |       |       |       |      |      |      | S  | S  | S  | S  |     |     |     |
| <b>1.700</b> Home Occupations  | Z   | Z    | Z     | Z     | Z     | Z    | Z    | Z    | Z  | Z  | Z  | Z  | Z   |     |     |

**Z** = Zoning Permit required; **S**=Special Use Permit required;  
**Z/S** = Zoning permit if lot less than 1 acre, SUP if lot 1 acre and greater; **Blank** = Use not permitted.

*Town Code of Blowing Rock, North Carolina*

| Uses Description   | R-A | R-15 | R-10S | R-10D | R-10M | R-6S | R-6M | R-MH | CB | TC | GB | OI | HMC | HSG | PGS |
|--|-----|------|-------|-------|-------|------|------|------|----|----|----|----|-----|-----|-----|
| <b>2.000 Sales and Rental of Goods, Merchandise and Equipment</b>  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>2.100 Commercial activities to be located within a building.</b> The display of goods outside that building is allowed.   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>2.110</b> High-volume traffic generation  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>2.111</b> Miscellaneous   |     |      |       |       |       |      |      |      | S  | S  | S  |    |     |     |     |
| <b>2.112</b> ABC Stores  |     |      |       |       |       |      |      |      | S  | S  | S  |    |     |     |     |
| <b>2.113</b> Convenience Stores  |     |      |       |       |       |      |      |      | S  | S  | S  |    |     |     |     |
| <b>2.120</b> Low-volume traffic generation   |     |      |       |       |       |      |      |      | ZS | ZS | S  |    |     |     |     |
| <b>2.130</b> Wholesale Sales   |     |      |       |       |       |      |      |      |    |    | ZS |    |     |     |     |
| <b>3.000 Office, Clerical, Research and Services Not Primarily Related to Goods or Merchandise</b>   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>3.100 All operations conducted entirely within fully enclosed building</b>  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>3.110</b> Operations designed to attract and serve customers or clients on the premises, such as the offices of attorneys, physicians, other professions, insurance and stock brokers, travel agents, government office buildings, etc. |     |      |       |       |       |      |      |      | ZS | ZS | ZS | S  | ZS  |     |     |
| <b>3.120</b> Operations designed to attract little or no customer or client traffic other than employees of the entity operating the principal use   |     |      |       |       |       |      |      |      | ZS | ZS | ZS | C  | ZS  |     |     |
| <b>3.130</b> Office or clinics of physicians or dentists with not more than 10,000 square feet of gross floor area   |     |      |       |       |       |      |      |      | ZS | ZS | ZS | S  | ZS  |     |     |

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**Z/S** = Zoning permit if lot less than 1 acre, SUP if lot 1 acre and greater; **Blank** = Use not permitted.

*Town Code of Blowing Rock, North Carolina*

| Uses Description   | R-A | R-15 | R-10S | R-10D | R-10M | R-10M | R-6M | R-MH | CB | CB | GB | GB | HMC | HSG | PGS |
|--|-----|------|-------|-------|-------|-------|------|------|----|----|----|----|-----|-----|-----|
| <b>3.200 Operations conducted within or outside fully enclosed building</b>  |     |      |       |       |       |       |      |      |    |    |    |    |     |     |     |
| <b>3.210</b> Operations designed to attract or serve customers, clients on premises  |     |      |       |       |       |       |      |      | ZC | ZS | ZS | S  |     |     |     |
| <b>3.211</b> Tattoo parlors and body piercing studios/establishments   |     |      |       |       |       |       |      |      |    |    |    |    |     |     |     |
| <b>3.212</b> Psychic reading, palmistry, card or tea reading, fortune telling, or similar services   |     |      |       |       |       |       |      |      |    |    |    |    |     |     |     |
| <b>3.220</b> Operations designed to attract little or no customer or client traffic other than the employees of the entity operating the principal use |     |      |       |       |       |       |      |      | ZS | ZS | ZS | S  |     |     |     |
| <b>3.230</b> Banks with drive-in windows   |     |      |       |       |       |       |      |      | ZS | ZS | ZS |    |     |     |     |
| <b>4.000 Manufacturing, Processing, Creating, Repairing, Renovating, Painting, Cleaning, Assembling of Goods, Merchandise and Equipment</b>            |     |      |       |       |       |       |      |      |    |    |    |    |     |     |     |
| <b>4.100</b> All operations conducted entirely within fully enclosed building  |     |      |       |       |       |       |      |      |    |    |    |    |     |     |     |
| <b>4.110</b> Majority of dollar volume of business done with walk-in trade   |     |      |       |       |       |       |      |      | ZS | ZS | ZS |    |     |     |     |
| <b>4.120</b> Majority of dollar volume of business not done with walk-in trade   |     |      |       |       |       |       |      |      |    |    | ZS |    |     |     |     |
| <b>4.200</b> Operations conducted within or outside fully enclosed building  |     |      |       |       |       |       |      |      |    |    | ZS |    |     |     |     |

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**Z/S** = Zoning permit if lot less than 1 acre, SUP if lot 1 acre and greater; **Blank** = Use not permitted.

Town Code of Blowing Rock, North Carolina

| Uses Description   | R-A | R-15 | R-10S | R-10D | R-10M | R-6S | R-6M | R-MH | CB | TC | GB | OI | HMC | HSG | PGS |
|--|-----|------|-------|-------|-------|------|------|------|----|----|----|----|-----|-----|-----|
| <b>5.000 Educational, Cultural, Religious, Philanthropic, Social, Fraternal Uses</b>   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>5.100 Schools</b>   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>5.110</b> Elementary and secondary (including associated grounds and athletic and other facilities)   | S   | S    | S     | S     | S     | S    | S    | S    | S  | S  |    | S  |     |     |     |
| <b>5.120</b> Trade or vocational schools   |     |      |       |       |       |      |      |      |    |    | S  |    |     |     |     |
| <b>5.130</b> Colleges, universities, community colleges (including associated facilities such as dormitories, office buildings, athletic fields, etc.)   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>5.200</b> Churches, synagogues and temples (including associated residential structures for religious personnel and associated buildings but not including secondary school or elementary school buildings) | S   | S    | S     | S     | S     | S    | S    | S    | ZS | ZS | ZS | S  | ZS  |     |     |
| <b>5.300 Libraries, museums, art galleries, art centers and similar uses (including associated educational and instructional activities)</b>   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>5.310</b> Located within a building designed and previously occupied as a residence or within a building having a gross floor area not in excess of 3,500 feet  |     |      |       |       |       |      |      |      | S  | S  | S  | S  | S   |     |     |
| <b>5.320</b> Located within any permissible structure  |     |      |       |       |       |      |      |      | S  | S  | S  | S  |     |     |     |
| <b>5.400 Social, fraternal clubs and lodges, union halls, and similar uses</b>   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>5.410</b> Featuring live entertainment or dancing at least four days per month  |     |      |       |       |       |      |      |      |    |    | S  |    |     |     |     |
| <b>5.420</b> Not featuring live entertainment or dancing at least four days per month  |     |      |       |       |       |      |      |      | S  | S  | S  | S  |     |     |     |

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*Town Code of Blowing Rock, North Carolina*

| Uses Description   | R-A | R-15 | R-10S | R-10D | R-10M | R-6S | R-6M | R-MH | CB | TC | GB | OI | HMC | HSG | PGS |
|--|-----|------|-------|-------|-------|------|------|------|----|----|----|----|-----|-----|-----|
| <b>6.000 Recreation, Amusement, Entertainment</b>  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>6.100 Activity conducted entirely within building or substantial structure</b>  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>6.110</b> Bowling alleys, skating rinks, indoor tennis and squash courts, billiard and pool halls, indoor athletic and exercise facilities and similar uses   |     |      |       |       |       |      |      |      |    |    | ZS |    |     |     |     |
| <b>6.120</b> Movie theaters  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>6.121</b> Seating capacity of not more than 300   |     |      |       |       |       |      |      |      | ZS | ZS | ZS |    |     |     |     |
| <b>6.122</b> Unlimited seating capacity  |     |      |       |       |       |      |      |      |    |    | ZS |    |     |     |     |
| <b>6.130</b> Coliseums, stadiums and all other facilities listed in the 6.100 classification designed to seat or accommodate simultaneously more than 1,000 people   |     |      |       |       |       |      |      |      |    |    | S  |    |     |     |     |
| <b>6.140</b> Arcades as an accessory to a principle use  |     |      |       |       |       |      |      |      |    |    | S  |    |     |     |     |
| <b>6.200 Activity conducted primarily outside enclosed buildings or structures</b>   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>6.210</b> Privately owned outdoor recreational facilities such as golf and country clubs, swimming or tennis clubs, etc., not constructed pursuant to a permit authorizing the construction of some residential development | S   | S    | S     | S     | S     | S    | S    | S    |    |    |    |    |     |     | S   |

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| <b>Uses Description</b>   | <b>R-A</b> | <b>R-15</b> | <b>R-10S</b> | <b>R-10D</b> | <b>R-10M</b> | <b>R-6S</b> | <b>R-6M</b> | <b>R-MH</b> | <b>CB</b> | <b>TC</b> | <b>GB</b> | <b>OI</b> | <b>HMC</b> | <b>HSG</b> | <b>PGS</b> |
|---|------------|-------------|--------------|--------------|--------------|-------------|-------------|-------------|-----------|-----------|-----------|-----------|------------|------------|------------|
| <b>6.220</b> Publicly owned and operated outdoor recreational facilities such as athletic fields, golf courses, tennis courts, swimming pools, parks, etc., not constructed pursuant to a permit authorizing the construction of another use such as a school | S          | S           | S            | S            | S            | S           | S           | S           | S         | S         | S         | S         | S          |            | S          |
| <b>6.230</b> Golf driving ranges not accessory to golf courses, miniature golf courses, skateboard parks, water slides, and similar uses  |            |             |              |              |              |             |             |             |           |           | ZS        |           |            |            |            |
| <b>6.240</b> Horseback riding, stables (not constructed pursuant to permit authorizing residential development)   | S          |             |              |              |              |             |             |             |           |           |           |           |            | Z          |            |
| <b>6.250</b> Automobile and motorcycle racing tracks  |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>6.260</b> Drive-in movie theaters  |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>6.300 Adult business establishments</b> , subject to the specific regulations and standards contained in Article XVII  |            |             |              |              |              |             |             |             |           |           | S         |           |            |            |            |
| <b>7.000 Institutional Residence or Confinement Facilities</b>  |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>7.100</b> Hospitals, clinics, other medical treatment facilities (including mental health) in excess of 10,000 square feet of floor area   |            |             |              |              |              |             |             |             |           |           |           |           | S          |            |            |

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|--|-----|------|-------|-------|-------|------|------|------|----|----|----|----|-----|-----|-----|
| <b>7.200</b> Nursing Care Institutions, Intermediate Care Institutions, Handicapped or Infirm Institutions, Child Care Institutions  |     |      |       |       |       |      |      |      |    |    |    |    | S   |     |     |
| <b>7.250</b> Facilities that are designed to provide a continuum of care, including independent living, assisted living/CCRC, home health care, adult day care, intermediate care, skilled nursing care, and acute care; provided, however, that residential living units shall be limited to no more than seven units per acre. |     |      |       |       |       |      |      |      |    |    |    |    | S   |     |     |
| <b>7.300 Institutions</b> (other than halfway houses) where mentally ill persons are confined  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>7.400 Penal and Correctional Facilities</b>   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>8.000 Restaurants, Bars, Night Clubs</b>  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>8.100</b> No substantial carry-out or delivery service, no drive-in service, no service or consumption outside fully enclosed structure   |     |      |       |       |       |      |      |      | ZS | ZS | ZS |    |     |     |     |

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|---|-----|------|-------|-------|-------|------|------|------|----|----|----|----|-----|-----|-----|
| <b>8.200</b> No substantial carry-out or delivery service, no drive-in service. Service or consumption outside fully enclosed structure not allowed after 10:00 p.m. local time. [Amended October 24, 1988 and June 13, 2006] |     |      |       |       |       |      |      |      | ZS | ZS | ZS |    |     |     |     |
| <b>8.300</b> Carry-out and delivery service, consumption outside fully enclosed structure allowed. Service or consumption outside fully enclosed structure not allowed after 10:00 p.m. local time. [Amended June 13, 2006]   |     |      |       |       |       |      |      |      | ZS | ZS | ZS |    |     |     |     |
| <b>8.400</b> Carry-out and delivery service, drive-in service, service or consumption outside fully enclosed structure allowed  |     |      |       |       |       |      |      |      |    |    | ZS |    |     |     |     |
| <b>8.500</b> [Deleted in its entirety June 8, 1993]   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>8.600</b> Any of the above where the gross proceeds from the sale of food and non-alcoholic beverages are less than the gross proceeds from the sale of alcoholic beverages  |     |      |       |       |       |      |      |      |    |    | S  |    |     |     |     |

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|--|-----|------|-------|-------|-------|------|------|------|----|----|----|----|-----|-----|-----|
| <b>9.000 Motor Vehicle-Related Sales and Service Operations</b>  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>9.100</b> Motor vehicle sales or rental; mobile home sales  |     |      |       |       |       |      |      |      |    |    | ZS |    |     |     |     |
| <b>9.200</b> Sales with installation of motor vehicle parts or accessories (e.g., tires, mufflers, etc.)   |     |      |       |       |       |      |      |      |    |    | ZS |    |     |     |     |
| <b>9.300</b> Motor vehicle repair and maintenance, not including substantial body work   |     |      |       |       |       |      |      |      |    |    | S  |    |     |     |     |
| <b>9.400</b> Motor vehicle painting and body work  |     |      |       |       |       |      |      |      |    |    | S  |    |     |     |     |
| <b>9.500</b> Gas Sales   |     |      |       |       |       |      |      |      | S  | S  | S  |    |     |     |     |
| <b>9.600</b> Car wash  |     |      |       |       |       |      |      |      |    |    | Z  |    |     |     |     |
| <b>10.000 Storage and Parking</b>  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>10.100</b> Automobile parking garages or parking lots not located on a lot on which there is another principal use to which the parking is related  |     |      |       |       |       |      |      |      | Z  | Z  | Z  |    | Z   |     |     |
| <b>10.200</b> Storage of goods not related to sale or use of those goods on the lot where they are stored  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>10.210</b> All storage within completely enclosed structures  |     |      |       |       |       |      |      | S    | Z  | Z  | Z  |    | S   |     |     |
| <b>10.300</b> Parking of vehicles or storage of equipment outside enclosed structures where: (i) vehicles or equipment are owned and used by the person making use of lot; and (ii) parking or storage is more than a minor and incidental part of the overall use made of the lot |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |

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|--|------------|-------------|--------------|--------------|--------------|-------------|-------------|-------------|-----------|-----------|-----------|-----------|------------|------------|------------|
| <b>10.300</b> Parking of vehicles or storage of equipment outside enclosed structures where: (i) vehicles or equipment are owned and used by the person making use of lot; and (ii) parking or storage is more than a minor and incidental part of the overall use made of the lot |            |             |              |              |              |             |             |             | ZS        | ZS        | ZS        |           |            |            |            |
| <b>11.000 Scrap Materials, Salvage Yards, Junkyards, Automobile Graveyards</b>   |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
|  |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>12.000 Services and Enterprises Related to Animals</b>  |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>12.100</b> Veterinarian   |            |             |              |              |              |             |             |             |           |           | Z         |           |            |            |            |
| <b>12.200</b> Kennel   |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>13.000 Emergency Services</b>   |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>13.100</b> Police Station   |            |             |              |              |              |             |             |             | S         | S         | S         | S         |            |            |            |
| <b>13.200</b> Fire Station   |            |             |              |              |              |             |             |             | S         | S         | S         | S         |            |            |            |
| <b>13.300</b> Rescue Squad, Ambulance Service  |            |             |              |              |              |             |             |             | S         | S         | S         | S         |            |            |            |
| <b>13.400</b> Civil Defense operation  |            |             |              |              |              |             |             |             | S         | S         | S         | S         |            |            |            |
| <b>14.000 Agricultural, Silvicultural, Mining, Quarrying Operations</b>  |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>14.100</b> Agricultural operations, farming   |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>14.110</b> Agricultural operations excluding livestock. Includes beekeeping; plant nurseries; orchards; fruit, grain, leaf, vegetable, and seed crops   | Z          |             |              |              |              |             |             | Z           | Z         | Z         |           |           |            |            |            |

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|---|------------|-------------|--------------|--------------|--------------|-------------|-------------|-------------|-----------|-----------|-----------|-----------|------------|------------|------------|
| <b>14.120</b> Agricultural operations including livestock, but excluding commercial feed lots and commercial egg production. The number of livestock, in any combination, shall be limited to the equivalent of the following: no more than two cows or cattle per acre; no more than two horses per acre; no more than five hogs per acre; no more than eight sheep or goats per acre; and no more than 20 chickens per acre. The preceding figures are intended to be proportional and not cumulative; therefore, only one cow and one horse would be permitted on a single acre; or one cow and three hogs; or one cow and four sheep; or one cow and ten chickens, etc. | Z          |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>14.130</b> Sod farming   | S          |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>14.200</b> Silvicultural operations  | Z          | Z           | Z            | Z            | Z            | Z           | Z           | Z           |           |           |           |           |            |            |            |
| <b>14.300</b> Mining or quarrying operations, including on-site sales of products   |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>14.400</b> Reclamation landfill  | Z          | Z           | Z            | Z            | Z            | Z           | Z           | Z           | Z         | Z         | Z         |           | Z          |            | Z          |
| <b>15.000 Miscellaneous Public and Semi-Public Facilities</b>   |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>15.100</b> Post Office   |            |             |              |              |              |             |             |             | S         | S         | S         | S         |            |            |            |

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|--|------------|-------------|--------------|--------------|--------------|-------------|-------------|-------------|-----------|-----------|-----------|-----------|------------|------------|------------|
| <b>15.150</b> Public Maintenance Building  |            |             |              |              |              |             |             |             | S         | S         | S         | S         |            | Z          |            |
| <b>15.200</b> Airport  |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>15.300</b> Sanitary landfill  |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>15.400</b> Military Reserve, National Guard Centers   |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>16.000 Dry Cleaner, Laundromat</b>  |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
|  |            |             |              |              |              |             |             |             | S         | S         | S         |           |            |            |            |
| <b>17.000 Utility Facilities</b>   |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>17.100</b> Neighborhood   | S          | S           | S            | S            | S            | S           | S           | S           | S         | S         | S         | S         | S          |            |            |
| <b>17.200</b> Community or Regional  |            |             |              |              |              |             |             |             | S         | S         | S         |           |            |            |            |
| <b>18.000 Towers and Related Structures</b>  |            |             |              |              |              |             |             |             |           |           |           |           |            |            |            |
| <b>18.100</b> Antennas that are not part of the distribution network of a commercial tele-communications system.                                   | Z          | Z           | Z            | Z            | Z            | Z           | Z           | Z           | Z         | Z         | Z         | Z         | Z          | Z          | Z          |
| <b>18.200</b> Towers for non-commercial, individual use; 20 feet in height or less   | Z          | Z           | Z            | Z            | Z            | Z           | Z           | Z           | Z         | Z         | Z         | Z         | Z          | Z          | Z          |
| <b>18.300</b> Towers for non-commercial, use; over 20 feet in height   | S          | S           | S            | S            | S            | S           | S           | S           | S         | S         | S         | S         | S          | S          | S          |
| <b>18.400</b> Telecommunication Towers   |            |             |              |              |              |             |             |             | S         | S         | S         | S         |            |            |            |
| <b>18.500</b> Alternative Tower Structures.  |            |             |              |              |              |             |             |             | S         | S         | S         | S         | S          | S          |            |
| <b>18.550</b> Commercial Wireless Telecommunications Antennas that are part of the distribution network of a commercial telecommunications system. | Z          | Z           | Z            | Z            | Z            | Z           | Z           | Z           | Z         | Z         | Z         | Z         | Z          | Z          | Z          |

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|--|-----|------|-------|-------|-------|------|------|------|----|----|----|----|-----|-----|-----|
| <b>19.000 Open Air Markets and Horticultural Sales</b>   |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>19.100</b> Open air markets (farm and craft markets, produce markets)   | Z   |      |       |       |       |      |      |      | S  | S  | S  |    |     |     |     |
| <b>19.200</b> Horticultural sales with outdoor display to the extent authorized by the applicable conditional use permit.  | Z   |      |       |       |       |      |      |      | S  | S  | S  |    |     |     |     |
| <b>19.300</b> Temporary sale of goods, wares, or merchandise by religious, educational, civic, patriotic, charitable, or fraternal organizations within the right-of-way of any of the streets or portions of streets or any sidewalk adjacent thereto as described in Section 8-49 of the Town of Blowing Rock Code of Ordinances. The use as described herein shall be subject to obtaining a zoning permit from the Zoning Administrator. | Z   | Z    | Z     | Z     | Z     | Z    | Z    | Z    | Z  | Z  | Z  | Z  | Z   | Z   | Z   |
| <b>19.400</b> Temporary sale of farm products (fruits, vegetables, eggs, or similar products) or nursery products by an itinerant merchant. Permit not valid for more than ninety calendar days. Not more than one such permit per property or development. No display of products within thirty (30) feet of edge of pavement or right-of-way.  |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |

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|---|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| <b>20.000 Funeral Home</b>  |          |          |          |          |          |          |          |          |          |          |          |          |          |          |          |
| 20.000 Funeral Home   |          |          |          |          |          |          |          |          |          | Z        | Z        | Z        | Z        |          |          |
| <b>21.000 Cemetery and Crematorium</b>  |          |          |          |          |          |          |          |          |          |          |          |          |          |          |          |
| 21.100 Cemetery   | S        | S        | S        | S        | S        | S        | S        | S        |          |          |          |          |          |          |          |
| 21.200 Crematorium  |          |          |          |          |          |          |          |          |          |          |          |          |          |          |          |
| <b>22.000 Nursery Schools; Day Care Centers</b>   |          |          |          |          |          |          |          |          |          |          |          |          |          |          |          |
| 22.000 Nursery Schools;<br>Day Care Centers   | S        | S        | S        | S        | S        | S        | S        | S        | S        | S        | S        | S        | S        |          |          |
| <b>23.000 Temporary Structures Used in Connection with the Construction of a Permanent Building or for Some Non-Recurring Purpose</b> |          |          |          |          |          |          |          |          |          |          |          |          |          |          |          |
| 23.000 Temporary Structures Used in Connection With the Construction of a Permanent Building or for Some Non-Recurring Purpose        | Z        | Z        | Z        | Z        | Z        | Z        | Z        | Z        | Z        | Z        | Z        | Z        | Z        |          | Z        |
| <b>24.000 Bus Station</b>   |          |          |          |          |          |          |          |          |          |          |          |          |          |          |          |
| 24.000 Bus Station  |          |          |          |          |          |          |          |          |          | S        | S        | S        |          |          |          |
| <b>25.000 Commercial Greenhouse Operations</b>  |          |          |          |          |          |          |          |          |          |          |          |          |          |          |          |
| 25.100 No on-premises sales   | S        | S        |          |          |          |          |          |          |          | S        | S        | S        |          |          |          |
| 25.200 On-premises sales permitted  | S        |          |          |          |          |          |          |          |          | S        | S        | S        |          |          |          |
| <b>26.000 Special Events</b>  |          |          |          |          |          |          |          |          |          |          |          |          |          |          |          |
| 26.000 Special Events   | <u>S</u> | <u>S</u> | <u>S</u> | <u>S</u> | <u>S</u> | <u>S</u> | <u>S</u> | <u>S</u> | <u>S</u> | <u>S</u> | <u>S</u> | <u>S</u> | <u>S</u> | <u>S</u> | <u>S</u> |
| <b>27.000 Off Premises Signs</b>  |          |          |          |          |          |          |          |          |          |          |          |          |          |          |          |
| 27.000 Off Premises Signs   |          |          |          |          |          |          |          |          |          |          |          |          |          |          |          |

Z = Zoning Permit required; S=Special Permit required;

Z/S = Zoning permit if lot less than 1 acre, SUP if lot 1 acre and greater; **Blank** = Use not permitted.

*Town Code of Blowing Rock, North Carolina*

| Uses Description                       | R-A | R-15 | R-10S | R-10D | R-10M | R-6S | R-6M | R-MH | CB | TC | GB | OI | HMC | HSG | PGS |
|--|-----|------|-------|-------|-------|------|------|------|----|----|----|----|-----|-----|-----|
| <b>28.000 Subdivisions</b>             |     |      |       |       |       |      |      |      |    |    |    |    |     |     |     |
| <b>28.100</b> Major                    | S   | S    | S     | S     | S     | S    | S    | S    | S  | S  | S  | S  | S   |     |     |
| <b>28.200</b> Minor                    | Z   | Z    | Z     | Z     | Z     | Z    | Z    | Z    | Z  | Z  | Z  | Z  | Z   |     |     |
| <b>29.000<br/>Combination<br/>Uses</b> | S   | S    | S     | S     | S     | S    | S    | S    | ZS | ZS | ZS | S  | ZS  |     |     |

*Note: The Office/Institutional District and related uses were enacted on July 14, 1998.  
 The Parks and Green Space District and related uses were enacted on July 14, 1998.  
 The R-10S District and related uses were enacted on October 13, 1998.  
 The R-10D District and related uses were enacted on December 8, 1998.  
 The R-10M District and related uses were enacted on October 13, 1998.  
 The R-6S District and related uses were enacted on October 13, 1998.  
 The R-6M District and related uses were enacted on October 13, 1998.  
 The R-A District and related uses were enacted on March 14, 2000.*

## **Article 11 - Supplementary Land Use Regulations**

**Section 16-11.1 Bed and Breakfast.** Bed and Breakfast establishments are permissible with a special use permit in the bed and breakfast overlay zoning district as well as the CB, GB, and OI districts.

**16-11.1.1** The building that houses the dwelling unit may not be expanded by more than ten percent of its original floor area, nor may rooms for rent be added onto or created within accessory buildings.

**16-11.1.2** Not more than one sign advertising the existence of a bed and breakfast operation may be erected on the lot where such use is located. No side of this sign may exceed four square feet in surface area. The sign may not be internally illuminated.

**Section 16-11.2 Perimeter Fences and Walls.** For the purposes of this section, a fence or wall shall be defined as a structure used to delineate a boundary or used as a barrier or means of protection, confinement, or screening. Furthermore, for the purposes of this section, a retaining wall is to be included within the meaning of a fence or wall.

**16-11.2.1** Fences and walls are permitted as an accessory use in all zoning districts, provided that:

- a) Except as expressly authorized by an applicable special use permit or otherwise required to comply with an applicable provision of the Blowing Rock Code, no fence or wall located within a required front yard setback area shall exceed four feet in height above grade. Where there is no required front yard setback, no fence located forward of the actual building line or within 25 feet of the front property line, whichever is less, shall exceed four feet in height, above street grade.
- b) No fence or wall, located within a side or rear yard setback, shall exceed six (6) feet in height above grade, except as expressly authorized by an applicable Special Use permit or otherwise required to comply with an applicable provision of the Blowing Rock Code. No other fence or retaining wall, outside of applicable setback areas, shall exceed 12 feet in height above grade, except as expressly authorized by an applicable Special Use permit or by authorization from the Blowing Rock Town Council. Retaining walls and/or retaining structures exceeding five (5) feet in height, measured from the top of the footing, shall be designed and constructed under the responsible charge of a NC registered professional engineer. The monitoring engineer shall submit a sealed report, including final approval, on the retaining structure(s) construction to the Building Code Official.
- c) Columns or posts shall not extend more than 18 inches above the built height of the fence or wall. Columns or posts shall be separated by a horizontal distance of at least four feet, except at gates.
- d) The height limitations do not apply to fences or walls built in conjunction with electric or

gas substations; water or wastewater treatment plants; reservoirs; or outdoor recreational uses. Such fences or walls shall not exceed ten feet in height without specific approval of the Town Council.

- e) The height shall be measured at the highest point, not including columns or posts, of the fence or wall section as measured from the grade on the side nearest the abutting property or street. Any retaining wall or berm below the fence or wall shall be considered as part of the overall height. Safety railings shall not be included in height measurements.

**16-11.2.2.** No fence or wall shall be constructed within or upon any street right-of-way or easement. In addition, no fence or wall shall be constructed within six feet of the edge of any street pavement.

**16-11.2.3.** No fence or wall shall alter or impede the natural flow of water in any stream, creek, drainage swale, ditch, or drainage easement.

**16-11.2.4.** No wall or solid fence higher than 42 inches above grade shall be placed within the sight visibility triangle of any public street, private street, or driveway.

**16-11.2.5.** Fences or walls shall be constructed of wood, brick, ornamental iron, chain link, wire, stone, or other approved masonry. Any fence or wall serving as a retaining wall shall be solid concrete, rock, masonry, or wood and constructed to the standards of the State Building Code.

**16-11.2.6.** Chain link or wire fences with slat weave shall be prohibited. Chain link or wire fences are not be permitted in the Central Business (CB), General Business (GB), or Office Institutional (OI) zoning districts. A chain link or wire fence located within the required front yard setback in a residential zoning district shall be screened from adjacent properties and the street by an opaque screen, "Type A", as described in Section 16-22.6 of the Land Use Ordinance.

**16-11.2.7.** The finished side of the fence or wall shall face the abutting property. The exposed framing of each section of fence, if any, shall face the interior yard or property.

**16-11.2.8.** The owner of the property on which the fence or wall is located is required to maintain the fence or wall in a safe and attractive condition and plumb (vertical) to the ground. Fences or walls that are not maintained in a safe manner through neglect, lack of repair, manner of construction, method of placement, or otherwise shall be repaired, replaced, or demolished.

**16-11.2.9.** No fence or wall shall block access from doors or windows. Fences or walls shall be located at least three feet from building walls except where the fences or walls project from a building wall.

**16-11.2.10.** Nothing in this section shall preclude the installation of temporary fences around construction works, erected or maintained pursuant to the NC Building Code or Section 16-264 (Sedimentation and Erosion Control).

**16-11.2.11.** A permit shall be obtained from the Planning and Inspections Office prior to the construction or the erection of any fence or wall to assure compliance with the requirements of this section. The fee for the permit shall be the same as for a Miscellaneous Zoning Permit.

**16-11.2.12.** The Town Council recognizes that, because of the wide range of properties to which this Section must apply, it is neither possible nor prudent to establish inflexible requirements related to fence or wall design, placement, or height limitations. Therefore, the Administrator may authorize deviations from the presumptive requirements for fence or wall design, placement, or height limitations whenever the Administrator finds that (1) such deviations are necessary because of particular characteristics or circumstances associated with a specific property or project; and (2) such deviations will not be detrimental to the public welfare or contrary to the intent of these regulations. Whenever the Administrator allows or requires a deviation from the presumption requirements of this Section, that deviation shall be noted on the face of the fence permit along with the reasons for allowing or requiring the deviation. An application for a deviation from the requirements of this Section that is denied by the Administrator may be appealed to the Board of Commissioners.”

## Article 12 - Density and Dimensional Regulations

**Section 16-12.1. Minimum Lot Size.** All lots in the following zones shall have at least the amount of square footage indicated in the following table:

| Zoning Classification | Minimum Square Feet  |
|-----------------------|--|
| R-A                   | The minimum lot size for a residence shall be one-half acre. |
| R-15                  | 15,000   |
| R-10                  | 10,000   |
| R-6                   | 6,000  |
| R-MH                  | 6,000  |
| CB                    | No minimum   |
| GB                    | No minimum   |
| OI                    | No minimum   |
| HMC                   | No minimum   |
| HSG                   | No minimum   |
| PGS                   | No minimum   |

**Section 16-12.2. Residential Density.** The following shall represent the maximum density permitted for residential uses in the various zoning districts:

| Zoning Classification | Permitted Use | Maximum Density   |   |
|-----------------------|---------------|---|---|
|                       |               | Within Watershed Area   | Outside Watershed Area  |
| R-15                  | Single Family | 2 Units Per Acre<br>Minimum Lot Size: 15,000 sf                               | 3 Units Per Acre<br>Minimum Lot Size: 15,000 sf                               |
| R-10S                 | Single Family | 2 Units Per Acre<br>Minimum Lot Size: 10,000 sf                               | 4 Units Per Acre<br>Minimum Lot Size: 10,000 sf                               |
| R-10D                 | Two Family    | 2 Buildings (4 Units) Per Acre<br>Minimum Lot Size: 15,000 sf<br>per building | 2 Buildings (4 Units) Per Acre<br>Minimum Lot Size: 15,000 sf<br>per building |
| R-10 M                | Two Family    | 2 Buildings (4 Units) Per Acre<br>Minimum Lot Size: 15,000 sf<br>per building | 3 Buildings (6 Units) Per Acre<br>Minimum Lot Size: 15,000 sf per<br>building |

| Zoning Classification | Permitted Use | Maximum Density   |   |
|-----------------------|---------------|---|---|
|                       |               | Within Watershed Area   | Outside Watershed Area  |
| R-10 M                | Multi Family  | 4 Units Per Acre<br>Also limited to 24% impervious area.  | 4 Units Per Acre  |
| R-6S                  | Single Family | 2 Units Per Acre<br>Minimum Lot Size: 6,000 sf  | 6 Units Per Acre<br>Minimum Lot Size: 6,000 sf                            |
| R-6M                  | Two Family    | 2 Buildings (4 Units) Per Acre<br>Minimum Lot Size: 9,000 sf per building<br>Also limited to 24% impervious area. | 3 Buildings (6 Units) Per Acre<br>Minimum Lot Size: 9,000 sf per building |
| R-6M                  | Multi Family  | 5 Units Per Acre<br>Also limited to 24% impervious area.  | 5 Units Per Acre  |

**16-12.2.1.** Every lot developed as a single-family residence with accessory apartment shall have the number of square feet equal to 133% of the minimum required for single family residences in that district. Lots in the CB, GB and OI districts may be used for single-family residential purposes regardless of lot size.

**16-12.2.2.** Every lot developed as a duplex or two-family conversion shall have the number of square feet equal to 150% of the minimum required for the single-family residences in that district.

**16-12.2.3.** Lots in the R-MH, GB, and HMC zoning districts, where residential developments are permissible, may be developed at a density equal to the density allowed within the R-6S District for single family developments, or the density allowed within the R-6M District for multi-family developments, whichever is applicable to the type of development that is being proposed. Properties zoned CB or TC are not subject to residential density limits.

**16-12.2.4.** With respect to lots where multi-family conversions are permissible, the lot must contain at least the number of square feet equal to 200% of the minimum required for single family residency if a conversion into three dwelling units is proposed and 250% of the minimum required for single family residency if a conversion into four dwelling units is proposed.

**Section 16-12.3. Minimum Lot Widths.** No lot may be created that is so narrow or otherwise so irregularly shaped that it would be impracticable to construct on it a building that:

- a) Could be used for purposes that are permissible in that zoning district; and
- b) Could satisfy any applicable setback requirements for that district.

**16-12.3.1.** Without limiting the generality of the foregoing standard, the following minimum lot widths are required to satisfy the standard set forth in herein. The lot width shall be measured along a straight line connecting the points at which a line that demarcates the required setback from the street intersects with lot boundary lines at opposite sides of the lot.

| Zoning Classification | Lot Width |
|-----------------------|-----------|
| R-A                   | 100 feet  |
| R-15                  | 100 feet  |
| R-10                  | 80 feet   |
| R-6                   | 60 feet   |
| R-MH                  | 60 feet   |
| CB                    | None      |
| GB                    | None      |
| OI                    | None      |
| HMC                   | None      |
| HSG                   | None      |
| PGS                   | None      |

**16-12.3.2.** No lot created after the effective date of this chapter that is less than the recommended width shall be entitled to a variance from any building setback requirement.

**Section 16-12.4. Building Setback Requirements.** Subject to the other provisions of this section, no portion of any building or any sign may be located on any lot closer to any lot line or to the street right-of-way line or center line than is authorized in the table set forth below. If the street right-of-way line is readily determinable (by reference to a reworked map, set irons, or other means), the setback shall be measured from such right-of-way line. If the right-of-way is not so determinable, the setback shall be measured from the street centerline. The term "lot boundary

line" refers to lot boundaries other than those that abut streets. For the purposes of determining setbacks in this article, the Blue Ridge Parkway boundary is considered a lot boundary line.

| Zone | Minimum Distance From Street Right-of-Way Line |               | Minimum Distance From Street Centerline |               | Minimum Distance From Lot Boundary Line |
|------|--|---------------|---|---------------|---|
|      | Building                                       | Sign          | Building                                | Sign          |   |
| R-15 | 30   | 20.0          | 45                                      | 50.0          | 12                                      |
| R-10 | 30   | 15.0          | 45                                      | 45.0          | 10                                      |
| R-6  | 25   | 12.5          | 40                                      | 42.5          | 8                                       |
| R-MH | 25   | 12.5          | 40                                      | 42.5          | 8                                       |
| CB   | Sec. 16-12.6                                   | Sec. 16-17.13 | Sec. 16-12.6                            | Sec. 16-17.13 | Sec. 16-12.6                            |
| GB   | 20   | Sec. 16-17.13 | 35                                      | Sec. 16-17.13 | 8                                       |
| OI   | 15   | Sec. 16-17.13 | 30                                      | Sec. 16-17.13 | 8                                       |
| HMC  | 15   | Sec. 16-17.13 | 30                                      | Sec. 16-17.13 | 8                                       |
| HSG  | -  | Sec. 16-17.13 | 30                                      | Sec. 16-17.13 | -                                       |
| PGS  | -  | Sec. 16-17.13 | 30                                      | Sec. 16-17.13 | -                                       |
| R-A  | 25   | 12.5          | 40                                      | 42.5          | 12                                      |

**16-12.4.1.** The board of adjustment may issue a variance to allow a reduction in the minimum front yard setback if it concludes that, because of the topographic features of the lot in question, it would be impractical to build upon the lot in compliance with the front setback requirements or such compliance would work an unwarranted hardship on the developer.

**16-12.4.2.** Whenever a lot in a nonresidential district has a common boundary line with a lot in a residential district, and the property line setback requirement applicable to the residential lot is greater than that applicable to the nonresidential lot, then the lot in the nonresidential district shall be required to observe the property line setback requirement applicable to the adjoining residential lot.

**16-12.4.3.** Setback distances shall be measured from the property line or street right-of-way line to a point on the lot that is directly below the nearest extension of any part of the building that is substantially a part of the building itself and not a mere appendage to it (such as a flagpole, etc.). Please refer to Appendix B, page A-8 for Diagram.

**16-12.4.4.** Whenever a private road that serves more than three lots or more than three dwelling units or that serves any nonresidential use tending to generate traffic equivalent to more than three dwelling units is located along a lot boundary, then:

- a) If the lot is not also bordered by a public street, buildings and freestanding signs shall be set back from the centerline of the private road just as if such road were a public street.
- b) If the lot is also bordered by a public street, then the setback distance on lots used for residential purposes (as set forth above in the column labeled "Minimum Distance from Lot Boundary Line") shall be measured from the inside boundary of the traveled portion of the private road.

**16-12.4.5.** Notwithstanding any other provision of this section, on lots in residential zones used for residential purposes, a maximum of one accessory building may be located in the rear yard of such lot without regard to the setback requirements otherwise applicable to the rear lot boundary line if such accessory building does not exceed fifteen feet in height or contain more than 150 square feet of gross floor area.

**16-12.4.6.** The front yard requirements of this chapter for dwelling units shall not apply to any lot where the average setback of existing buildings located wholly or partially within one hundred feet on either side of the proposed dwelling and on the same side of the street in the same block and use district as such lot is less than the minimum required front yard depth. In such case, the setback on such lots may be less than the required setback but not less than the average of the existing setbacks on the aforementioned lots, or a distance of twenty (20) feet from the street right-of-way lines, whichever is greater.

**16-12.4.7.** Notwithstanding any other provisions of this Section, the Administrator may grant an administrative waiver or variance of the setback requirements contained herein due to topography. In such case, the minimum distance required under this Section for placement of a building from the street right-of-way line or street centerline may be reduced up to 5 feet by using one of the calculations, described herein. The property owner shall be entitled to choose from either method.

**16-12.4.7.1.** The elevation shall be calculated by a licensed North Carolina Surveyor at two points in each of the side lot property lines, one of which is located in the street centerline or the street right-of-way line, and the other of which is located 45 feet or 30 feet from said point, as may be appropriate, running the same course as the lot boundary line. The two elevations and the street centerline or the street right-of-way line shall be averaged, and the two elevations and the lot boundary lines shall be averaged, and for every two feet of decrease or increase in elevation as determined by a licensed North Carolina Surveyor between the two averaged elevations, one foot of setback may be

deducted from the front setback requirements of this chapter; or

**16-12.4.7.2.** The elevation shall be calculated by a licensed North Carolina Surveyor at two points, one of which is located at a point in the street centerline or street right-of-way line which is in the center of said lot, and the other of which is located 45 feet or 30 feet from said point, as may be appropriate, running perpendicular from said point in the center of the lot. For every two feet of decrease or increase in elevation as determined by a licensed North Carolina Surveyor between the two elevations, one foot of setback may be deducted from the front setback requirements of this chapter.

**16-12.4.8.** Notwithstanding any other provisions of this section, a parking deck that has neither a wall nor a roof may be located within the required setback area between the building and the street. An open, protective barrier not more than 42 inches high located around the perimeter of the parking deck shall not be considered a wall for the purposes of this section.

**16-12.4.9.** Whenever a lot in a residential zoning district is bordered by more than one public street, the applicable street setback shall only apply to the lot line bordering the primary street. A street setback of twenty (20) feet shall apply to the lot line(s) bordering streets other than the primary street.

**16-12.4.10.** The individual lots within a Townhouse development, whether for residential or non-residential use, shall not be required to meet the building setback requirements, minimum lot sizes, or minimum lot widths as specified in herein, provided the overall zoning lot containing the Townhouse development meets such standards.

**Section 16-12.5. Setback Requirements from Historic Trails.** The Town hereby recognizes the existence of three historic trails known as the *Lonesome Pine Trail*, the *Glen Burney Trail*, and the *Thunderhole Trail*. No building, fence, structure, or other encumbrance shall be permitted within 15 feet of the centerline of any such trail. The approximate location of those trails are delineated on a map located in the Planning and Inspections Office.

**Section 16-12.6. Central Business and Town Center District Setbacks, Building Height, Open Space, and Green Space Requirements.** Lots developed in the Central Business District and Town Center District shall meet the following standards pertaining to setbacks, building heights, open space and green space areas, and other development criteria:

**16-12.6.1. Setbacks.** For purposes of this section, primary streets shall be Main Street, Sunset Drive, and Hwy 221. Where a lot or property is bordered by more than one primary street, Main Street shall be the primary street. In such case, other streets shall be considered side streets.

**16-12.6.1.1.** All buildings may be rebuilt to the existing building footprint. This option may only be applied if, prior to the development or removal of the building, a survey is performed by a licensed North Carolina Surveyor to accurately determine the existing footprint.

**16-12.6.1.2.** If a proposed building is not built back to an existing footprint, or development is on vacant property, the following setback requirements apply.

**16-12.6.1.2.1.** Primary and side street setback(s) shall be the lesser of:

- (a) 15% of the average lot depth, or
- (b) 15 feet

**16-12.6.1.2.2.** A building may encroach into the required primary street setback along 50% of the lot width. However, no building may encroach closer than ten (10) feet from the back of the sidewalk. When a building is permitted to encroach into the required primary street setback, the displaced open/green space area must be placed within the front 1/3 of the lot.

**16-12.6.1.3.** In Sections 16-12.6.1.2.1 and 16-6.1.2.2 above, the setback shall be measured from the back of the public sidewalk. For the purposes of this subsection, public sidewalks are typically located within five (5) feet of the edge of the public street. The area between the buildings and the sidewalk shall be open space.

**16-12.6.1.4.** Side lot and rear boundary setbacks will be a minimum of five (5) feet. Common walls (i.e. zero (0) setbacks) are not allowed. Where an alley is not required by Section 16-12.6.7 "Alleys", green space is required in the areas between buildings and the side and rear property lines.

**16-12.6.1.5.** Lots that are one (1) acre or greater in size shall have 15-foot side and rear lot boundary setbacks.

**16-12.6.2. *Open Space/Green Space.*** For purposes of this section, open space is defined as the gross land area not covered by a building.

**16-12.6.2.1.** Within the open space area, a minimum of 75% of the open space at the front of the building, must be planted green space with an emphasis on large, over-story, shade trees. Planted green space shall be defined as areas with grass, herbaceous ground cover, shrubbery, and drip line areas of mature, shade trees. Massive areas of mulch, void of vegetation, shall not be considered green space.

**16-12.6.2.2.** One (1) over-story tree, as defined in Appendix E, Section 10(c), page 41, shall be planted for every 300 square feet of required green space.

**16-12.6.3. *Tree Protection.*** All existing trees eight (8) inches in diameter at breast height (dbh) and greater shall be retained to the extent reasonably practical. If saving such trees, especially those located within the proposed building footprint, would cause undue hardship on the developer, those trees may be removed through the approval of the Board of Commissioners. All proposed developments in the Central Business and Town Center Districts shall submit a site plan with a tree survey that locates all trees eight (8) inches dbh and greater. The Board of Commissioners shall specifically approve the removal of any trees eight (8) inches dbh and greater during site plan approval. Any trees designated for protection

shall be replaced with a tree of similar species at least three (3) inches in diameter (measured 6 inches above grade), if the tree dies or must be removed due to unforeseen construction activities.

**16-12.6.4. Retaining Walls.** All retaining walls shall be preserved and maintained. If the retaining wall is in poor structural condition, a new wall must be built back to replicate the original wall.

**16-12.6.4.1.** New retaining walls in the Central Business and Town Center Districts that are adjacent to a street shall be made of natural, locally found stone. Cultured stone that has the appearance of natural, locally found stone may be used as a substitute.

**16-12.6.4.2.** The Board of Commissioners recognize the need for compliance with ADA requirements and will consider such when reviewing a request for removal, or modification, of existing retaining walls.

**16-12.6.5. Building Height.** The following standards determine the applicable building heights for buildings in the Central Business and Town Center Districts.

**16-12.6.5.1.** The maximum building height shall be limited to 30 feet, as measured from the average elevation of the existing or proposed sidewalk along the primary street to the highest point of the building or structure (Please refer to Appendix B for Diagram)\_Where an existing rock wall is located adjacent to an existing sidewalk, or where a property does not border a primary street on any side, the maximum height shall be measured from the average finished ground elevation adjacent to the primary entrance to the highest point of the building or structure.

**16-12.6.5.2.** The maximum building height shall also be limited to no more than a 25% increase above the average existing height of adjacent buildings, provided that at least two (2) stories shall be permitted. The average existing height shall be determined by the average height of existing buildings located within 100 feet of the proposed building, on the same side of the street, same block and use district. The lesser of a) 25% greater than the average existing heights or b) 30 feet shall determine the maximum allowable building height. Where the maximum building height is established, that maximum height shall govern the entire structure.

**16-12.6.5.3.** The maximum eave height shall be limited to 24 feet. The eave height shall be the vertical distance measured from the sidewalk to the lowest point of the eave above the primary entrance.

**16-12.6.5.4.** The maximum building height and maximum eave height for any building located 50 feet or more from the back of the existing or proposed sidewalk adjacent to a public street shall be measured from the average finished ground elevation adjacent to the primary entrance. For purposes of this paragraph, the entire structure must be located at or beyond the 50-foot setback. If the building is located 50 feet or more from the sidewalk, the eave height shall be the vertical distance measured from the adjacent

grade at the primary entrance to the lowest point of the eave above the primary entrance. Maximum building heights may exceed thirty (30) feet, and the maximum eave height may exceed 24 feet, if the building is set back beyond the standard 15-foot setback. No building height in the Central Business or Town Center may exceed forty (40) feet. Additionally, no other building walls, measured from the average finished grade along the base of the wall to the highest point of the structure may exceed 40 feet. The following table shall be used to determine the maximum building height and eave height based on the proposed building setback from any street:

| Setback | Maximum Building Height | Maximum Eave Height |
|---------|-------------------------|---------------------|
| 15      | 30                      | 24                  |
| 20      | 31                      | 25                  |
| 25      | 32                      | 26                  |
| 30      | 33                      | 27                  |
| 35      | 34                      | 28                  |
| 40      | 35                      | 29                  |
| 45      | 36                      | 30                  |
| 50      | 37*                     | 31*                 |
| 55      | 38*                     | 32*                 |
| 60      | 39*                     | 33*                 |
| 65      | 40*                     | 34*                 |

\*measured from finished ground elevation adjacent to primary entrance to building

Where a building is permitted to encroach into the 15-foot setback as provided in Section 16-12.6.1.2.1(b) the building height for that part of the building forward of the 15-foot setback must be reduced one (1) foot for every one (1) foot of setback encroachment.

**16-12.6.6. Property Grades and Elevations.** Property grade elevations shall be maintained as reasonably practical. The Board of Commissioners shall have the authority to determine if the proposed grade elevations are consistent with the character of the Central Business and Town Center areas.

**16-12.6.7. Alleys.** Alleys that connect adjacent lots and provide parking, delivery access, utility access, and garbage pickup will be strongly encouraged. Alleys may be required in certain situations through a Special Use permit.

**16-12.6.7. Building Height Limitations.** Subject to the remaining provisions of this section, the height of a building or structure in any residential district (R-15, R-10, R-6, or RMH), may not exceed 35 feet. Similarly, the eave height of a building or structure in the R-A district or any non-residential district (HMC, HSG, OI, or PGS) may not exceed 35 feet and the overall height of the building or structure shall not exceed 50 feet.

In the General Business District, the overall height of the building or structure shall not exceed 35 feet if the building meets the standard 20-foot street setback and 8-foot side and rear setbacks. The overall building height may be increased to 50 feet if the building meets a street setback of 40 feet and side and rear setbacks of 16 feet.

**16-12.6.7.1.** Subject to Section 16-12.6.7.2 the following features are exempt from the district height limitations set forth in Section 16-12.6.7.

- a) Chimneys, church spires, elevator shafts, and similar structural appendages not intended as places of occupancy or storage;
- b) Flagpoles and similar devices;
- c) Heating and air conditioning equipment, solar collectors, and similar equipment, fixtures and devices.

**16-12.6.7.2.** The features listed in Section 16-12.6.7.1 are exempt from the height limitations set forth in Section 16-12.6.7, if they conform to the following requirements:

- a) Not more than one-third of the total roof area may be consumed by such features.
- b) The features described in Section 16-12.6.7.1.c) above must be set back from the edge of the roof a minimum distance of one foot for every foot by which such features extend above the roof surface of the principal building to which they are attached.
- c) The permit-issuing authority may authorize or require that parapet walls be constructed (up to a height not exceeding that of the features screened) to shield the features listed in Section 16-12.6.7.1(a) & c) from view.

**16-12.6.8.** The permit-issuing authority may authorize the construction of a building one or more sides of which exceed the building height limitations set forth in Section 16-12.6.7 if it finds that:

- a) The height of the building measured at the front side does not exceed the building height limitations set forth in section 16-12.6.7 and
- b) Other sides of the building exceed building height limitations because the building is constructed on a severe grade, and
- c) The building is not in violation of the Mountain Ridge Protection Act of 1983.

**16-12.6.9.** With respect to developments in the non-residential zoning districts that require a Special Use permit, the Board of Commissioners may authorize the construction of a building one or more sides of which exceed the building height limitations set forth in section 16-12.6.7 if it finds that:

- a) It would be impractical to construct on the lot a building that suits the reasonable needs of the proposed use (such as a gymnasium, theater, etc.) without the height exception; and
- b) The building will be designed, located, and constructed so that it does not unreasonably obstruct the view of owners or occupants of other property and is not otherwise substantially out of character with the size, scale, and appearance of other buildings within the immediate neighborhood; and
- c) The building is not in violation of the Mountain Ridge Protection Act of 1983.

**16-12.6.10.** Towers and antennas are allowed in all zoning districts to the extent authorized in Article 10 (*Table of Permissible Uses*), use classification 18.000, and Article 18.

**Section 16-12.7. Density on Lots Where Portion Dedicated to Town.** Subject to the other provisions of this section, if any portion of a tract lies within an area designated on any officially adopted Town plan as part of a proposed public park, greenway, or bikeway, and before the tract is developed, the owner of the tract, with the concurrence of the Town, dedicates to the Town that portion of the tract so designated, then, when the remainder of the tract is developed for residential purposes, the permissible density at which the remainder may be developed shall be calculated in accordance with the provisions of this section.

**16-12.7.1.** If the proposed use of the remainder is a single-family residential subdivision, the developer need not set aside usable open space to the extent that an equivalent amount of land has previously been dedicated to the Town in accordance with Section 16-12.7.

**16-12.7.2.** If the proposed use of the remainder is a multi-family project, then the permissible density at which the remainder may be developed shall be calculated by regarding the dedicated portion of the original lot as if it were still part of the lot proposed for development.

**16-12.7.3.** If the portion of the tract that remains after dedication as provided in Section 16-12.7 is divided in such a way that the resultant parcels are intended for future subdivision or development, then each of the resultant parcels shall be entitled to its pro rata share of the "density bonus" provided for in herein.

**Section 16-12.8. Flexibility in Applying the Standards Contained in this Article.** With respect to developments or projects that require a Special Use permit, the Board of Commissioners may permit deviations from the strict requirements of this Article if it concludes, based upon the information submitted at the hearing, that the project or development with the approved deviations:

- a) Will not materially endanger the public health or safety;
- b) Will not substantially injure the value of adjoining or abutting property;

- c) Will be in harmony with the area in which it is to be located;
  - d) Will be in general conformity with the master plan or other plan officially adopted by the board; and
  - e) Will be in substantial conformity with the intent of the regulations contained in this Article.
- Any such findings shall be clearly entered on the face of the permit.

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## **Article 13 - Open Space**

**Section 16-13.1. Usable Open Space.** Except as provided herein, all residential developments shall be developed so that at least five percent of the total area of the development remains permanently as usable open space.

**16-13.1.1.** For purposes of this section, usable open space means an area that:

- a) Is not encumbered with any substantial structure;
- b) Is not devoted to use as a roadway, parking area, sidewalk, or above-ground storm water retention/detention area;
- c) Is either:
  - 1) left in its natural or undisturbed state (as of the date development began), if such a state is compatible with use of the area described in subdivision (4), or
  - 2) properly planted and landscaped;
- d) Is capable of being used and enjoyed for purposes of informal and unstructured recreation and relaxation, including but not limited to walkways, playing fields, picnic areas, hiking or walking trails; and
- e) Is legally and practicably accessible to the residents of the development from which the required open space is taken, or to the public if dedication of the open space is required pursuant to Section 16-13.3.

**16-13.1.2.** With respect to multi-family developments or single-family subdivisions, any common open space that meets the criteria established in Section 16-13, may be used to satisfy the five percent requirement of this section.

**16-13.1.3.** Residential subdivisions containing fewer than twenty lots are exempt from the requirements of this section unless the Town agrees that it will accept an offer of dedication of such open space, and in that case the offer of dedication shall be made. However, for purposes of determining whether this exemption applies, the entire tract to be subdivided shall be considered, and the requirements of this section cannot be avoided by dividing a project into phases or stages.

**Section 16-13.2. Ownership and Maintenance of Required Open Space.** Except as provided in Section 16-13.1.3 and Section 16-13.3, usable open space required to be provided by the developer in accordance with this article shall not be dedicated to the public but shall remain under the ownership and control of the developer (or successor) or a homeowner's association or similar organization that satisfies the criteria established in Section 16-13.4.

The person or entity identified herein as having the right of ownership and control over such facilities and open space shall be responsible for the continuing upkeep and proper maintenance of the same.

**Section 16-13.3. Dedication of Open Space.** If any portion of any lot proposed for residential development lies within an area designated on an officially adopted Town recreation plan as a neighborhood park or part of a greenway system, the area so designated (not exceeding five percent of the total lot area) shall be included as part of the area set aside to satisfy the requirement of Section 16-13.1. This area shall be dedicated to public use.

If more than five percent of a lot proposed for residential development lies within an area designated as provided in herein, the Town may attempt to acquire the additional land in the following manner:

- a) The developer may be encouraged to dedicate the common space thereby created; or
- b) The Town may purchase or condemn the land.

**Section 16-13.4. Homeowners Associations.** Homeowners' associations or similar legal entities that, pursuant to Section 16-13.2, are responsible for the maintenance and control of common areas, including open space, shall be established in such a manner that:

- a) Provision for the establishment of the association or similar entity is made before any lot in the development is sold or any building occupied;
- b) The association or similar legal entity has clear legal authority to maintain and exercise control over such common areas; and
- c) The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas.

## Article 14 - Streets and Sidewalks

**Section 16-14.1. Street Classification.** In all new subdivisions, streets that are dedicated to public use shall be classified as provided herein. The classification shall be based upon the projected volume of traffic to be carried by the street, stated in terms of the number of trips per day. The number of dwelling units to be served by the street may be used as a useful indicator of the number of trips but is not conclusive. Whenever a subdivision street continues an existing street that formerly terminated outside the subdivision or it is expected that a subdivision street will be continued beyond the subdivision at some future time, the classification of the street will be based upon the street in its entirety, both within and outside of the subdivision.

***16-14.1.1. The classification of streets shall be as designated herein.***

***16-14.1.1.1. 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.

***16-14.1.1.2. 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.

***16-14.1.1.3. Cul-de-sac.*** A street that terminates in a vehicular turn-around.

***16-14.1.1.4. Sub-collector.*** A street whose sole 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.

***16-14.1.1.5. 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.

***16-14.1.1.6. Arterial.*** A major street in the city's street system that serves as an avenue for the circulation of traffic into, out, or around the city and carries high volumes of traffic.

***16-14.1.1.7. Marginal Access Street.*** 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.

**Section 16-14.2. Access to Public Streets in General.** Every lot shall have either direct or indirect access to a public street. A lot has direct access to a public street if a sufficient portion of a boundary of the lot abuts the public street right-of-way so that an access way meeting the criteria

set forth in herein can be established. A lot has indirect access if it connects to a public street by means of one or more private roads that are of sufficient size to meet the criteria set forth below. The access provided must be adequate to afford a reasonable means of ingress and egress for emergency vehicles as well as for all those likely to need or desire access to the property in its intended use.

**Section 16-14.3. Access to Arterial Streets.** Whenever a major subdivision that involves the creation of one or more new streets borders on or contains an existing or proposed arterial street, no direct driveway access may be provided from the lots within this subdivision onto this street.

**Section 16-14.4. Entrances to Streets.** All driveway entrances and other openings onto streets within the Town's planning jurisdiction shall be constructed so that:

- a) Vehicles can enter and exit from the lot in question without posing any substantial danger to themselves, pedestrians, or vehicles traveling in abutting streets; and
- b) Interference with the free and convenient flow of traffic in abutting or surrounding streets is minimized.

**16-14.4.1.** As provided in G.S. 136-93, no person may construct any driveway entrance or other opening onto a state-maintained street except in accordance with a permit issued by the North Carolina Department of Transportation. Issuance of this permit is prima facie evidence of compliance with the standard set forth in Section 16-4.4.

**16-14.4.2.** If driveway entrances and other openings onto Town-maintained streets are constructed in accordance with the specifications and requirements set forth in Appendix C-16, page 14, to this chapter, this shall be deemed prima facie evidence of compliance with the standard set forth in Section 16-14.4.

**16-24.4.3.** For purposes of this section, the term "prima facie evidence" means that the permit-issuing authority may (but is not required to) conclude from this evidence alone that the proposed development complies with Section 16-14.4.

**16-14.4.4.** Driveways that connect to Town streets shall not exceed 12% grade within the first 20 feet. The maximum grade shall be measured along the centerline of said driveway a distance 20 feet from the edge of the street. The remaining portion of driveways shall not exceed 20% grade, except where further limited to 18% on shared driveways.

**Section 16-14.5. Coordination with Surrounding Streets.** The street system of a subdivision shall be coordinated with existing, proposed and anticipated streets outside the subdivision or outside the portion of a single tract that is being divided into lots (hereinafter, "surrounding streets") as provided in this section.

**16-14.5.1.** Collector streets shall intersect with surrounding collector or arterial streets at safe and convenient locations.

**16-14.5.2.** Sub-collector, local, and minor residential streets shall connect with surrounding streets where necessary to permit the convenient movement of traffic between residential neighborhoods or to facilitate access to neighborhoods by emergency service vehicles or for other sufficient reasons, but connections shall not be permitted where the effect would be to encourage the use of such streets by substantial through-traffic.

**16-14.5.3.** Whenever connections to anticipated or proposed surrounding streets are required by this section, the street right-of-way shall be extended, and the street developed to the property line of the subdivided property (or to the edge of the remaining undeveloped portion of a single tract) at the point where the connection to the anticipated or proposed street is expected. In addition, the permit-issuing authority may require temporary turnarounds to be constructed at the end of such streets pending their extension when such turnarounds appear necessary to facilitate the flow of traffic or accommodate emergency vehicles. Notwithstanding the other provisions of this subsection, no temporary dead-end street in excess of 1,000 feet may be created unless no other practicable alternative is available.

**Section 16-14.6. Relationship of Streets with Topography.** Streets shall be related appropriately to the topography. In particular, streets shall be designed to facilitate the drainage and storm water runoff objectives set forth in Article 16, and street grades shall conform as closely as practicable to the original topography. The maximum grade for all public streets and private roads shall not exceed fifteen percent (15 %).

**Section 16-14.7. Street Width, Sidewalk, and Drainage Requirements in Subdivisions.** Street rights-of-way are designed and developed to serve several functions:

- a) to carry motor vehicle traffic, and in some cases, allow on-street parking;
- b) to provide a safe and convenient passageway for pedestrian traffic; and
- c) to serve as an important link in the Town's drainage system.

The Board finds that, when properly constructed, streets developed without curb and gutter but with shoulders and drainage swales may serve all these functions while lowering post development storm water runoff and minimizing development costs. Therefore, minor, local and sub-collector streets where the grade does not exceed ten percent may be developed with a right-of-way width of thirty feet, pavement width of eighteen feet, two feet wide shoulders on either side, and drainage swales on either side, all constructed in accordance with the specifications referenced in Section 16-14.10.

Except as otherwise provided herein, all streets shall be constructed with curb and gutter and shall conform to the other requirements of this subsection. Only standard 90° curb may be used, except that roll-type curb shall be permitted along minor and local streets within residential subdivisions. Street pavement width shall be measured from curb face to curb face where 90° curb is used, and from the center of the curb where roll-type curb is used.

|                    | <b>Minimum Right-of-Way</b> | <b>Minimum Pavement</b> |
|--------------------|-----------------------------|-------------------------|
| <b>Type Street</b> | <b>Width in Feet</b>        | <b>Width in Feet</b>    |
| Minor              | 35                          | 18                      |
| Local              | 35                          | 18                      |
| Sub Collector      | 35                          | 20                      |
| Collector          | 35                          | 20                      |

**Section 16-14.8. General Layout of Streets.**

**16-14.8.1.** Sub-collector, local, and minor residential streets shall be curved whenever practicable to the extent necessary to avoid conformity of lot appearance.

**16-14.8.2.** Cul-de-sacs and loop streets are encouraged so that through traffic on residential streets is minimized. Similarly, to the extent practicable, driveway access to collector streets shall be minimized to facilitate the free flow of traffic and avoid traffic hazards.

**16-14.8.3.** All permanent dead-end streets, as opposed to temporary dead-end streets (see Section 16-14.5.3) shall be developed as cul-de-sacs in accordance with the standards set forth in Section 16-14.8.4. Except where no other practicable alternative is available, such streets may not extend more than 550 feet (measured to the center of the turn-around).

**16-14.8.4.** The right-of-way of a cul-de-sac shall have a radius of 40 feet. The radius of the paved portion of the turn-around (measured to the outer edge of the pavement) shall be 35 feet. The entire cul-de-sac shall be paved. No parking shall be permitted on the cul-de-sac.

**16-14.8.5.** Half streets (i.e., streets of less than the full required right-of-way and pavement width) shall not be permitted except where such streets, when combined with a similar street (developed previously or simultaneously) on property adjacent to the subdivision, creates or comprises a street that meets the right-of-way and pavement requirements of this chapter.

**16-14.8.6.** Streets shall be laid out so that residential blocks do not exceed 1,000 feet, unless no practicable alternative is available.

**Section 16-14.9. Street Intersections.** Streets shall intersect as nearly as possible at right angles, and no two streets may intersect at an angle less than 60°. Not more than two streets shall intersect at any one point, unless the public works director certifies to the permit-issuing authority that such an intersection can be constructed with no extraordinary danger to public safety.

**16-14.9.1.** Whenever possible, proposed intersections along one side of a street shall coincide with existing or proposed intersections on the opposite side of such street. In any event, where a center line offset (jog) occurs at an intersection, the distance between centerlines of the intersecting streets shall be not less than 150 feet.

**16-14.9.2.** No two streets may intersect with any other street on the same side at a distance of less than 400 feet measured from centerline to centerline of the intersecting street. When the intersected street is an arterial, the distance between intersecting streets shall be at least 1,000 feet.

**Section 16-14.10. Construction Standards and Specifications.** Construction and design standards and specifications for streets, sidewalks, and curbs and gutters are contained in Appendix C, and all such facilities shall be completed in accordance with these standards.

**Section 16-14.11. Private Roads in Subdivisions and Access to Subdivisions by Private Roads.** If a tract proposed for subdivision borders a public street, then a subdivision of that tract in which a private road is established to satisfy the access requirements of Section 16-14.2 may be approved unless the effect of such subdivision would be that, since the effective date of this

chapter, more than three lots served only by one or more private roads have been created out of that same tract.

**16-14.11.1.** If a tract proposed for subdivision has access to a public street only via a private road, then:

- a) Subject to the provisions in b) below, a subdivision of that tract in which the lots have access to a public street only via one or more private roads may be approved unless the effect of such subdivision would be that, since the effective date of this chapter, more than three lots that have access to a public street only via one or more private roads have been created out of that same tract.
- b) If all the lots created in such subdivision will border a street constructed to the public street standards established by this article, then such subdivision may be approved (regardless of the number of lots created) if the private road that provides access from the existing public street to the tract to be subdivided is constructed (or improved) to the standards set forth in this article for public streets.

**16-14.11.2.** The intent of Section 16-14.11.1 is primarily to allow the creation of not more than three lots developed for single-family residential purposes. Therefore, the permit-issuing authority may not approve any subdivision served by a private road in which one or more of the lots thereby created is intended for:

- a) duplex or multi-family residential use; or
- b) any non-residential use that would tend to generate more traffic than that customarily generated by three single-family residences.

To ensure that the intent of this subsection is not subverted, the permit-issuing authority may, among other possible options, require that the approved plans show the types and locations of buildings on each lot or that the lots in a residential subdivision served by a private road be smaller than the permissible size of lots on which duplex or multi-family developments could be located or that restrictive covenants limiting the use of the subdivided property in accordance with this subsection be recorded before final plat approval.

**16-14.11.3.** Except as otherwise provided herein, all subdivision streets shall be constructed in accordance with the public street standards set forth in this article and an offer of dedication to the public shall be made. Unless the recorded plat of a subdivision clearly shows a street to be private, the recording of such plat shall constitute an offer of dedication of such streets.

**16-14.11.4.** No final plat that shows lots served by private roads may be recorded unless the final plat contains the following notation:

*"Further subdivision of any lot shown on this plat as served by a private road may be prohibited by the Blowing Rock Land Use Code"*

**16-14.11.5.** The recorded plat of any subdivision that includes a private road shall clearly state that such road is a private road. Further, the initial purchaser of a newly created lot served by a private road shall be furnished by the seller with a disclosure statement outlining the

maintenance responsibilities for the road, in accordance with the requirements set forth in NCGS 136-102.6. The intention of this subsection is to afford the same protection to purchasers of lots on private roads within the Town as is provided to purchasers of lots outside the Town by NCGS 136-102.6.

**Section 16-14.12. Road and Sidewalk Requirements in Unsubdivided Developments.** Within unsubdivided developments, all private roads and access ways shall be designed and constructed to facilitate the safe and convenient movement of motor vehicle and pedestrian traffic. Width of roads, use of curb and gutter, and paving specifications shall be determined by the provisions of this chapter dealing with parking (Article 20) and drainage (Article 16). To the extent not otherwise covered in the foregoing articles, and to the extent that the requirements set forth in this article for subdivision streets may be relevant to the roads in unsubdivided developments, the requirements of this article may be applied to satisfy the standard set forth in the first sentence of this subsection.

**16-14.12.1.** Whenever a road in an unsubdivided development connects two or more sub-collector, collector, or arterial streets in such a manner that any substantial volume of through traffic is likely to make use of this road, such road shall be constructed in accordance with the standards applicable to subdivision streets and shall be dedicated. In other cases when roads in unsubdivided developments within the Town are constructed in accordance with the specifications for subdivision streets, the Town may accept an offer of dedication of such streets.

**16-14.12.2.** In all unsubdivided multi-family residential developments, sidewalks shall be provided linking dwelling units with other dwelling units, the public street, and on-site activity centers such as parking areas, laundry facilities, and recreational areas and facilities. Notwithstanding the foregoing, sidewalks shall not be required where pedestrians have access to a road that serves not more than nine dwelling units.

**16-14.12.3.** Whenever the permit-issuing authority finds that a means of pedestrian access is necessary from an unsubdivided development to schools, parks, playgrounds, or other roads or facilities and that such access is not conveniently provided by sidewalks adjacent to the roads, the developer may be required to reserve an unobstructed easement of at least ten feet to provide such access.

**16-14.12.4.** In unsubdivided nonresidential developments that abut a public street, sidewalks shall be constructed adjacent to such street if a sidewalk in that location is necessary to continue a pre-existing sidewalk. Whenever possible, such sidewalk shall be constructed within the public right-of-way.

**16-14.12.5.** The sidewalks required by this section shall be at least four feet wide and constructed according to the specifications set forth in Appendix C, except that the permit-issuing authority may permit the installation of walkways constructed with other suitable materials when it concludes that:

- a) Such walkways would serve the residents of the development as adequately as concrete sidewalks; and
- b) Such walkways could be more environmentally desirable or more in keeping with the overall design of the development.

**Section 16-14.13. Attention to Handicapped in Street and Sidewalk Construction.** As provided in G.S. 136-44.14, whenever curb and gutter construction is used on public streets, wheelchair ramps for the handicapped shall be provided at intersections and other major points of pedestrian flow. Wheelchair ramps and depressed curbs shall be constructed in accordance with published standards of the N.C. Department of Transportation, Division of Highways.

In unsubdivided developments, sidewalk construction for the handicapped shall conform to the requirements of Section (11X) of the North Carolina State Building Code.

**Section 16-14.14. Street Names and House Numbers.** Street names shall be assigned by the developer subject to the approval of the permit-issuing authority. Proposed streets that are obviously in alignment with existing streets shall be given the same name. Newly created streets shall be given names that neither duplicate nor are phonetically similar to existing streets within the Town's planning jurisdiction, regardless of the use of different suffixes (such as those set forth in Section 16-14.14.1).

**16-14.14.1.** Street names shall include a suffix such as the following:

- a) Circle: A short street that returns to itself.
- b) Court or Place: A cul-de-sac or dead-end street.
- c) Loop: A street that begins at the intersection with one street and circles back to end at another intersection with the same street.
- d) Street: All public streets not designated by another suffix.

**16-14.14.2.** Building numbers shall be assigned by the Town.

**Section 16-14.15. Bridges.** All bridges in subdivided and unsubdivided developments shall be constructed in accordance with the standards and specifications of the North Carolina Department of Transportation, except that bridges on roads not intended for public dedication in unsubdivided developments may be approved if designed by a licensed architect or engineer.

**Section 16-14.16. Utilities.** Utilities installed in public rights-of-way or along private roads shall conform to the requirements set forth in Article 15 Utilities.

**Section 16-14.17. Sidewalk Requirements.** Any new development in the R-10, R-6, R-MH, CB, GB, OI and HMC zoning districts shall have sidewalks, with curb and gutter and necessary storm sewer, along each public street abutting the development. The construction and design standards for the sidewalks, curb and gutter, and storm sewer are contained in Appendix C, and all such facilities shall be completed in accordance with those standards.

**16-14.17.1.** All costs associated with the sidewalk, curb and gutter, and storm sewer shall be borne by the developer.

**16-14.17.2.** All sidewalk, curb and gutter, and storm sewer shall be dedicated to the Town for perpetual maintenance. All such dedicated improvements shall be guaranteed for one year following the date of acceptance by the Town. Any defects in material and/or workmanship during the one-year period shall be immediately corrected by the developer.

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## Article 15 - Utilities

**Section 16-15.1. Utility Ownership and Easement Rights.** In any case in which a developer installs or causes the installation of water, sewer, electrical power, telephone, or cable television facilities and intends that such facilities shall be owned, operated or maintained by a public utility or any entity other than the developer, the developer shall transfer to such utility or entity the necessary ownership or easement rights to enable the utility or entity to operate and maintain such facilities.

**Section 16-15.2. Lots Served by Public Water or Sewer Lines.** Whenever service from a public water or sewer line is available, as "availability" is defined in Subsection 14-36(B) of the Town Code, then no use may be made of any building or structure to which such service is available unless connection is made to such line.

**Section 16-15.3. Sewage Disposal Facilities Required.** Every principal use and every lot with-in a subdivision shall be served by a sewage disposal system that is adequate to accommodate the reasonable needs of such use or subdivision lot, and that complies with all applicable health regulations.

**Section 16-15.4. Determining Compliance with Section 16-15.3.** Primary responsibility for determining whether a proposed development will comply with the standard set forth in Section 16-15.3 often lies with an agency other than the Town, and the developer must comply with the detailed standards and specifications of such other agency. The relevant agencies are listed in Section 16-15.4.1. Whenever any such agency requires detailed construction or design drawings before giving its official approval to the proposed sewage disposal system, the authority issuing a permit under this chapter may rely upon a preliminary review by such agency of the basic design elements of the proposed sewage disposal system to determine compliance with Section 16-15.3. However, construction of such system may not be commenced until the detailed plans and specifications have been reviewed and any appropriate permits issued by such agency.

**16-15.4.1. Type of System and Agency Authority:**

- a) Private Well Systems if Public Water not available – Watauga or Caldwell County Health Department
- b) New Public Water Systems – NC Department of Environment and Natural Resources (NCDENR)
- c) Connection to Existing Public Water System – Town of Blowing Rock Public Utilities

**16-15.4.2.** Notwithstanding the other provisions of this section, if a development is to be served by a privately operated sewage treatment system requiring approval from D.E.N.R. and the system is allowed because the Town has been required to refuse connection to the public system by federal or state statute, regulation, or order, then:

- a) The developer shall be required, as a condition of the permit authorizing the development, to post a bond, letter of credit, or other surety satisfactory to the Town Attorney to guarantee that, when service becomes available through the Town's system, the development will be brought into compliance with the provisions of Section 14-36 of

the Town Code and that all applicable fees and charges for connecting to the system will be paid, and

- b) All sewage collection lines that are to be dedicated to the Town when public service becomes available shall be built to Town specification.

**Section 16-15.5. Water Supply System Required.** Every principal use and every lot within a subdivision shall be served by a water supply system that is adequate to accommodate the reasonable needs of such use or subdivision lot and that complies with all applicable health regulations.

**Section 16-15.6. Determining Compliance with Section 16-15.5.** Primary responsibility for determining whether a proposed development will comply with the standard set forth in Section 16-15.5 often lies with an agency other than the Town and the developer must comply with the detailed standards and specifications of such other agency. The relevant agencies are listed in Section 16-15.6.1. Whenever any such agency requires detailed construction or design drawings before giving its official approval to the proposed water supply system, the authority issuing a permit under this chapter may rely upon a preliminary review by such agency of the basic design elements of the proposed water supply system to determine compliance with Section 16-15.5. However, construction of such system may not be commenced until the detailed plans and specifications have been reviewed and any appropriate permits issued by such agency.

***16-15.6.1. Type of System and Agency Authority:***

- a) Private Well Systems if Public Water not available – Watauga or Caldwell County Health Department
- b) New Public Water Systems – NC Department of Environment and Natural Resources (NCDENR)
- c) Connection to Existing Public Water System – Town of Blowing Rock Public Utilities

**Section 16-15.7. Lighting Requirements.** Except as qualified herein, all public streets, sidewalks, and other common areas or facilities in subdivisions created after the effective date of this chapter shall be sufficiently illuminated to ensure the security of property and the safety of persons using such streets, sidewalks, and other common areas or facilities.

**16-15.7.1.** To the extent that fulfillment of the requirement established herein would normally require streetlights installed along public streets, this requirement shall be applicable only to subdivisions located within the corporate limits of the Town.

**16-15.7.2.** All roads, driveways, sidewalks, parking lots, and other common areas and facilities in unsubdivided developments shall be sufficiently illuminated to ensure the security of property and the safety of persons using such roads, driveways, sidewalks, parking lots, and other common areas and facilities.

**16-15.7.3.** All entrances and exits in substantial buildings used for non-residential purposes and in multi-family residential dwellings containing more than four dwelling units shall be adequately lighted to ensure the safety of persons and the security of the building.

**Section 16-15.8. Excessive Illumination.** Lighting within any lot that unnecessarily illuminates any other lot and substantially interferes with the use or enjoyment of such other lot is prohibited. Lighting unnecessarily illuminates another lot if it clearly exceeds the standard set

forth in Section 16-15.7 or if the standard set forth in Section 16-15.7 could reasonably be achieved in a manner that would not substantially interfere with the use or enjoyment of neighboring properties.

**Section 16-15.9. Electric Power.** Every principal use and every lot within a subdivision shall have available to it a source of electric power adequate to accommodate the reasonable needs of such use and every lot within such subdivision. Compliance with this requirement shall be determined as follows:

- a) If the use is not a subdivision and is located on a lot that is served by an existing power line and the use can be served by a simple connection to such power line (as opposed to a more complex distribution system, such as would be required in an apartment complex or shopping center), then no further certification is needed.
- b) If the use is a subdivision or is not located on a lot served by an existing power line or a substantial internal distribution system will be necessary, then the electric utility service provider must review the proposed plans and certify to the Town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

**Section 16-15.10. Telephone Service.** Every principal use and every lot within a subdivision must have available to it a telephone service and cable adequate to accommodate the reasonable needs of such use and every lot within such subdivision. Compliance with this requirement shall be determining as follows:

- a) If the use is not a subdivision and is located on a lot that is served by an existing telephone line and the use can be served by a simple connection to such telephone line (as opposed to a more complex distribution system, such as would be required in an apartment complex or shopping center), then no further certification is necessary.
- b) If the use is a subdivision or is not located on a lot served by an existing telephone line or a substantial internal distribution system will be necessary, then the telephone utility company must review the proposed plans and certify to the Town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

**Section 16-15.11. Underground Utilities.** All electric power lines, (not to include transformers or enclosures containing electrical equipment including, but not limited to, switches, meters or capacitors which may be pad mounted), telephone, gas distribution, and cable television lines in residential subdivisions and multi-family residential developments constructed after the effective date of this chapter shall be placed underground in accordance with the specifications and policies of the respective utility service providers and located in accordance with Appendix C, Standard Drawing No. 6 or 7.

**Section 16-15.12. Utilities To Be Consistent With Internal and External Development.** Whenever it can reasonably be anticipated that utility facilities constructed in one development will be extended to serve other adjacent or nearby developments, such utility facilities (e.g., sanitary sewer or storm drainage facilities or water lines) shall be located and constructed so that extensions can be made conveniently and without undue burden or expense or unnecessary duplication of service.

**16-15.12.1.** The Town may require the developer to install utility facilities that are larger or more extensive than necessary to serve the developer's project alone if such oversized facilities are required to serve adjacent properties effectively and efficiently. If the Town requires the installation of oversized water or sewer lines under this section, the Town may bear the additional costs involved under the circumstances and to the extent set forth in Article VI of Chapter 14 of the Town Code.

**16-15.12.2.** All utility facilities shall be constructed in such a manner as to minimize interference with pedestrian or vehicular traffic and to facilitate maintenance without undue damage to improvements or facilities located within the development.

**Section 16-15.13. As-Built Drawings Required.** Whenever a developer installs or causes to be installed any utility line in any public right-of-way, the developer shall, as soon as practicable after installation is complete, and before acceptance of any water or sewer line, furnish the Town with a copy of a drawing that shows the exact location of such utility lines. Such drawings must be verified as accurate by the utility service provider. Compliance with this requirement shall be a condition of the continued validity of the permit authorizing such development.

**Section 16-15.14. Fire Hydrants.** Every development (subdivided or unsubdivided) that is served by a public water system shall include a system of fire hydrants sufficient to provide adequate fire protection for the buildings located or intended to be located within such development.

**16-15.14.1.** The presumption established by this article is that to satisfy the standard set forth in Section 16-15.14, fire hydrants must be located so that all parts of every building within the development may be served by a hydrant by laying not more than 500 feet of hose connected to such hydrant. However, the fire chief may authorize or require a deviation from this standard if another arrangement more satisfactorily complies with the standard set forth in Section 16-15.14.

**16-15.14.2.** The fire chief shall determine the precise location of all fire hydrants, subject to the other provisions of this section. In general, fire hydrants shall be placed six feet behind the curb line of publicly dedicated streets that have curb and gutter.

**16-15.14.3.** The Fire Chief shall determine the design standards of all hydrants based on fire flow needs. Unless otherwise specified by the Fire Chief, all hydrants shall have two 2½-inch hose connections and a 4½-inch connection. The 2½-inch hose connection shall be located at least 2½-inches from the ground level. All hydrant threads shall be national standard threads.

**16-15.14.4.** Water lines that serve hydrants shall be at least six-inch lines, and, unless no other practicable alternative is available, no such lines shall be dead-end lines.

**Section 16-15.15. Sites for and Screening of Dumpsters.** Every development that, under the Town's solid waste collection policies, is or will be required to provide one or more dumpsters for solid waste collection shall provide sites for such dumpsters that are:

- a) Located so as to facilitate collection and minimize any negative impact on persons occupying the development site, neighboring properties, or public rights-of-way; and
- b) Constructed according to specifications established by the public works director to allow for collection without damage to the development site or the collection vehicle.

**16-15.15.1.** All such dumpsters shall be screened if and to the extent that, in the absence of screening, they would be clearly visible to:

- a) Persons located within any dwelling unit on residential property other than that where the dumpster is located.
- b) Occupants, customers, or other invitees located within any building on non-residential property other than that where the dumpster is located.
- c) Persons traveling on any public street, sidewalk, or other public way.

**16-15.15.2.** When dumpster screening is required under this section, such screening shall be constructed, installed, and located to prevent or remedy the conditions requiring the screening.

*(For specific standards, see Article 21)*

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## **Article 16 - Flood Damage Prevention Storm Water Management & Watershed Protection**

**Flood Damage Prevention-Statutory Authorization.** The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 4, of Article 18 of Chapter 153A; and Article 6 of Chapter 153A of the North Carolina General Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry.

**Section 16-16.1. Findings of Fact.** The flood hazard areas of Blowing Rock are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods.

**Section 16-16.2. Statement of Purpose.** It is the purpose of this article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- a) restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- b) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- c) control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- d) control filling, grading, dredging and other development which may increase erosion or flood damage; and,
- e) prevent or regulate the construction of flood barriers which will unnaturally divert flood waters, or which may increase flood hazards to other lands.

**Section 16-16.3 Objectives.** The objectives of this article are:

- a) to protect human life and health;
- b) to minimize expenditure of public money for costly flood control projects;
- c) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- d) to minimize prolonged business interruptions;
- e) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- f) to help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and
- g) to insure that potential home buyers are notified that property is in a flood area.

**Section 16-16.4. Lands to Which This Article Applies.** This article shall apply to all areas of special flood hazard within the planning jurisdiction of the Town of Blowing Rock hereinafter referred to as "Town".

**Section 16-16.5. Basis for Establishing the Areas of Special Flood Hazard.** The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Watauga County dated December 3, 2009, which are adopted by reference and declared to be a part of this article.

The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date:

- a) Town of Blowing Rock, dated June 1, 1978
- b) Watauga County Unincorporated Area, dated June 18, 1980

**Section 16-16.6. Establishment of Floodplain Development Permit.** A Development Permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities.

**Section 16-16.7. Compliance.** No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with terms of this article and other applicable regulations.

**Section 16-16.8. Abrogation and Greater Restrictions.** This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**Section 16-16.9. Interpretation.** In the interpretation and application of this article all provisions shall be:

- a) considered as minimum requirements;
- b) liberally construed in favor of the governing body, and;
- c) deemed neither to limit nor repeal any other powers granted under state statutes.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the Town or by an officer or employee thereof for any flood damages that result from reliance on this article, or any administrative decision lawfully made hereunder.

**Section 16-16.10. Penalties for Violation.** Violation of the provisions of this article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction, therefore, be fined not more than \$50.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town from taking such other lawful action as is necessary to prevent or remedy any violation.

**Section 16-16.11. Designation of Floodplain Administrator.** The Zoning Administrator, or designee, hereinafter referred to as the “Floodplain Administrator”, is hereby appointed to administer and implement the provisions of this article.

**Section 16-16.12. Development Permit and Certification Requirements.** Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

**16-16.12.1.** A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

- a) the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
- b) the boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 16-16.5, or a statement that the entire lot is within the Special Flood Hazard Area;
- c) flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 16-16.5;
- d) the boundary of the floodway(s) or non-encroachment area(s) as determined in Section 16-16.5;
- e) the Base Flood Elevation (BFE) where provided as set forth in Section 16-16.5; Section 16-16.16; or Section 16-16.26;
- f) the old and new location of any watercourse that will be altered or relocated as a result of proposed development; and

**16-16.12.1.** Proposed elevation and method thereof, of all development within a Special Flood Hazard Area including but not limited to:

- a) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
- b) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be floodproofed; and
- c) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
- d) If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
- e) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this article are met. These details include:
  - 1) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
  - 2) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Section 16-16.20.4 when solid foundation perimeter walls are used in Zones A, AO, AE, and A1-30.
  - 3) Usage details of any enclosed areas below the lowest floor.

- 4) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- 5) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
- 6) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Section 16-16.23 and 16-16.2.
- 7) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

**16-16.12.2.** The Floodplain Development Permit shall include, but not be limited to:

- a) A description of the development to be permitted under the floodplain development permit.
- b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Section 16-16.5.
- c) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.
- d) The Regulatory Flood Protection Elevation required for the protection of all public utilities.
- e) All certification submittal requirements with timelines.
- f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
- g) The flood openings requirements, if in Zones A, AO, AE or A1-30.

**Section 16-16.13. Elevation Certificates.** A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be caused to withhold the issuance of a Certificate of Compliance/Occupancy.

**Section 16-16.14. Floodproofing Certificate.** If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data,

the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be caused to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be caused to withhold the issuance of a Certificate of Compliance/Occupancy.

**16-16.14.1.** If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Section 16-16.20.3.

**16-16.14.2.** If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

**Section 16-16.15. Certification Exemptions.** The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in items a) and b) of this section

- a) Recreational Vehicles meeting requirements of Section 16-16.23
- b) Temporary Structures meeting requirements of Section 16-16.24 and
- c) Accessory Structures less than 150 square feet meeting requirements of Section 16-16.25.

**Section 16-16.16. Duties and Responsibilities of the Local Administrator.** The Floodplain Administrator shall perform, but not be limited to, the following duties:

- a) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this article have been satisfied.
- b) Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received.
- c) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- d) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- e) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Section 16-16.28 are met.
- f) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Section 16-16.12.3
- g) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Section 16-16.12.3.
- h) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Section 16-16.12.3.

- i) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Section 16-16.16.12.3 and Section 16-16.20.4.
- j) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- k) When Base Flood Elevation (BFE) data has not been provided in accordance with the provisions of Section 16-16.5, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Section 16-16.26.2.2 in order to administer the provisions of this article.
- l) When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Section 16-16.5, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this article.
- m) Permanently maintain all records that pertain to the administration of this article and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- n) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local code and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the planning jurisdiction of the town at any reasonable hour for the purposes of inspection or other enforcement action.
- o) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this article, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- p) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- q) Make periodic inspections throughout the Special Flood Hazard Areas within the planning jurisdiction of the town. The Floodplain Administrator and each member of the inspections department shall have a right, upon presentation of proper credentials, to enter on any

premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

- r) Follow through with corrective procedures of Section 16-16.17.
- s) Review, provide input, and make recommendations for variance requests.
- t) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with the provisions of Section 16-16.5 of this article, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- u) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

**Section 16-16.17. Corrective Procedures.** When the Floodplain Administrator finds violations of applicable State and local laws, they shall notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

**16-16.17.1. Actions in Event of Failure to Take Corrective Action.** If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

- a) that the building or property is in violation of the floodplain management regulations;
- b) that a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
- c) that following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.

**16-16.17.2. Order to Take Corrective Action.** If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of this article, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

**16-16.17.3. Appeal.** Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

**16-16.17.4. Failure to Comply with Order.** If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

**Section 16-16.18. Variance Procedures.** The Board of Adjustments as established by The Town of Blowing Rock, hereinafter referred to as the “appeal board”, shall hear and decide requests for variances from the requirements of this article. Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.

Variances may be issued for:

- a) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
- b) functionally dependent facilities if determined to meet the definition as stated in Section 16-2.4, provided provisions of Section 16-16.18 a), b), and c) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety;
- c) or any other type of development, provided it meets the requirements of this Section.
- d) any other type of development provided it meets the requirements of this Section.

**16-16.18.1.** In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:

- a) the danger that materials may be swept onto other lands to the injury of others;
- b) the danger to life and property due to flooding or erosion damage;
- c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- d) the importance of the services provided by the proposed facility to the community;
- e) the necessity to the facility of a waterfront location as defined under Section 16-2.4 as a functionally dependent facility, where applicable;
- f) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- g) the compatibility of the proposed use with existing and anticipated development;
- h) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- i) the safety of access to the property in times of flood for ordinary and emergency vehicles;
- j) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- k) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

**16-16.18.2.** A written report addressing each of the above factors shall be submitted with the application for a variance.

**16-16.18.3.** Upon consideration of the factors listed above and the purposes of this article, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this article.

**16-16.18.4.** Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

**16-16.18.5.** The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

**16-16.18.6. *Conditions for Variances:***

- a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
- b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
- c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- d) Variances shall only be issued prior to development permit approval.
- e) Variances shall only be issued upon:
  - 1) a showing of good and sufficient cause;
  - 2) a determination that failure to grant the variance would result in exceptional hardship; and
  - 3) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

**16-16.18.7.** A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met:

- a) The use serves a critical need in the community.
- b) No feasible location exists for the use outside the Special Flood Hazard Area.
- c) The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.
- d) The use complies with all other applicable Federal, State and local laws.
- e) The Town of Blowing Rock has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

**Section 16-16.19. General Standards for Flood Hazard Reduction.**

**16-16.19.1. *In all areas of special flood hazard the following provisions are required:***

- a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

- b) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- c) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.
- d) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding, to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
- e) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- f) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the system into flood waters.
- g) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- h) Any alteration, repair, reconstruction, or improvements to a structure which is in compliance with the provisions of this article, shall meet the requirements of *new construction* as contained in this article.

**16-16.19.2. Nonconforming Buildings or Uses.** Nothing in this article shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this article and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this article.

**16-16.19.3.** New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Section 16-16.18.7. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Section 16-16.18.

**16-16.19.4.** All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

**16-16.19.5.** All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

**16-16.19.6.** All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

**16-16.19.7.** All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

**16-16.19.8.** When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.

**16-16.19.9.** When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest Base Flood Elevation (BFE) shall apply.

**Section 16-16.20. Specific Standards for Flood Hazard Reduction.** In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Section 16-16.5, or 16-16.26, the following provisions, in addition to the provisions of Section 16-16.19, are required:

**16-16.20.1. Residential Construction.** New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than 1.0 feet above the Regulatory Flood Protection Elevation, as defined in Article 2.

**16-16.20.2. Non-Residential Construction.** New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than 1.0 feet above the Regulatory Flood Protection Elevation, as defined in Section 16-2.4. Structures located in A, AE, AO, and A1-30 Zones may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 16-16.18 along with the operational plan and the inspection and maintenance plan.

**16-16.20.3. Manufactured Homes.** New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is elevated no lower than 1.0 feet above the Regulatory Flood Protection Elevation, as defined in Section 16-2.4.

**16-16.20.3.1.** Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation.

When the elevation of the chassis is above 36 inches in height, an engineering certification is required.

**16-16.20.3.2.** All enclosures or skirting below the lowest floor shall meet the requirements of Section 16-16.26.

**16-16.20.3.3.** An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

**16-16.20.4. Elevated Buildings.** Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

- a) shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
- b) shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
- c) shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
  - 1) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
  - 2) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
  - 3) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
  - 4) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
  - 5) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
  - 6) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

**Section 16-16.21. Additions/Improvements (Pre-Firm Structures).** The following shall apply to additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure areas noted.

**16-16.21.1. Not a substantial improvement.** The addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.

**16-16.21.2. A substantial improvement.** Both the existing structure and the addition and/or improvements must comply with the standards for new construction.

**Section 16-16.22. Additions/Improvements (Post-FIRM Structures).** Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction. The following shall apply to additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure as noted.

**16-16.22.1. Not a substantial improvement.** The addition and/or improvements only must comply with the standards for new construction.

**16-16.22.2. A substantial improvement.** The existing structure and the addition and/or improvements must comply with the standards for new construction.

**Section 16-16.23. Recreational Vehicles.** Recreational vehicles shall either be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions) or meet all the requirements for new construction.

**Section 16-16.24. Temporary Non-Residential Structures.** Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

- a) a specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
- b) the name, address, and phone number of the individual responsible for the removal of the temporary structure;
- c) the time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
- d) a copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
- e) designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

**Section 16-16.25. Accessory Structures.** When accessory structures (sheds, detached garages, etc.), are to be placed within a Special Flood Hazard Area, the following criteria shall be met.

- a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas).
- b) Accessory structures shall not be temperature controlled.
- c) Accessory structures shall be designed to have low flood damage potential.

- d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.
- e) Accessory structures shall be firmly anchored in accordance with the provisions of Section 16-16.19.1.(d).
- f) All service facilities such as electrical shall be installed in accordance with the provisions of 16-16.19.1.(d).
- g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Section 16-16.20.4.(c).
- h) An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with section 16-16.12.3.

**Section 16-16.26. Standards for Floodplains Without Established Base Flood Elevations.** Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Section 16-16.5, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Section 16-16.19.1, shall apply.

**16-16.26.1.** No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

**16-16.26.2.** The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria.

**16-16.26.2.1.** When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this article and shall be elevated or floodproofed in accordance with standards in Sections 16-16.19.1 and 16-16.20.

**16-16.26.2.2.** When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Sections 16-16.20 and 16-16.28.

**16-16.26.2.3.** All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with Section 16-16.5 and utilized in implementing this article.

**16-16.26.2.4.** When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Section 16-2.4. All other applicable provisions of Section 16-16.20 shall also apply.

**Section 16-16.27. Standards for Riverine Floodplains with Base Flood Elevations but Without Established Floodways or Non-encroachment Areas.** Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- a) Standards of Sections 16-16.19.1 and 16-16.20; and
- b) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

**Section 16-16.28. Floodways and Non-encroachment Areas.** Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Section 16-16.5. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Sections 16-16.19.1 and 16-16.21, shall apply to all development within such areas:

**16-16.28.1.** No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:

- a) it is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
- b) Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.

**16-16.28.2.** If Section 16-16.28.1 is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this article.

**16-16.28.3.** No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:

- a) the anchoring and the elevation standards of Section 16-16.20.3 and
- b) the no encroachment standard of Section 16-16.28.1.

**Section 16-16.29. Drainage, Erosion Control, Storm Water Management.** To the extent practicable, all development shall conform to the natural contours of the land and natural and pre-existing man-made drainage ways shall remain undisturbed.

To the extent practicable, lot boundaries shall be made to coincide with natural and pre-existing man-made drainage ways within subdivisions to avoid the creation of lots that can be built upon only by altering such drainage ways.

**Section 16-16.30. Development Must Drain Properly.** All development shall be provided with a drainage system that is adequate to prevent the undue retention of surface water on the development site. Surface water shall not be regarded as unduly retained if:

- a) The retention results from a technique, practice or device deliberately installed as part of an approved sedimentation or storm water runoff control plan; or
- b) The retention is not substantially different in location or degree than that experienced by the development site in its pre-development stage, unless such retention presents a danger to health or safety.

**16-16.30.1.** No surface water may be channeled or directed into a sanitary sewer.

**16-16.30.2.** Whenever practicable, the drainage system of a development shall coordinate with and connect to the drainage systems or drainage ways on surrounding properties or streets.

**16-16.30.3.** Use of drainage swales rather than curb and gutter and storm sewers in subdivisions is provided for in Section 16-14.7. Private roads and access ways within unsubdivided developments shall utilize curb and gutter and storm drains to provide adequate drainage if the grade of such roads or access ways is too steep to provide drainage in another manner or if other sufficient reasons exist to require such construction.

**16-16.30.4.** Construction specifications for drainage swales, curbs and gutters, and storm drains are contained in Appendix C.

**Section 16-16.31. Storm Water Management.** All developments shall be constructed and maintained so that adjacent properties are not unreasonably burdened with surface waters as a result of such developments. The requirements set forth herein are intended to assure compliance with this standard.

**16-16.31.1.** No development may be constructed or maintained so that such development unreasonably impedes the natural flow of water from higher adjacent properties across such development, thereby unreasonably causing substantial damage to such higher adjacent properties; and

**16-16.31.2.** No development may be constructed or maintained so that the surface waters from such development are unreasonably collected and channeled onto lower adjacent properties at such locations or at such volumes as to cause substantial damage to such lower adjacent properties.

**16-16.31.3.** The following requirements shall be complied with for all new construction or development in the Town. For the purposes of this subsection, a single-family residential subdivision shall be considered a development and the requirements shall be applicable to such a development. The requirements, however, shall not apply to the construction of single-family houses on individual lots with less than 10,000 square feet of impervious surface.

**16-16.31.3.1.** Storm water on the property shall be controlled and released at a rate between 2.2 CFS (cubic feet per second) and 2.4 CFS per acre.

**16-16.31.3.2.** Construction or development sites shall contain a minimum storage area for detention with controlled release of 9,100 cubic feet per acre of impervious surface on the site plus 3,600 cubic feet per acre of area with vegetative cover. The entire site must be considered when computing the required detention. For purposes of this subsection, all buildings, drives, roads, and/or streets shall be considered impervious to a distance three (3) feet beyond the ditch line on cuts and to the top of the slope on fill.

**16-16.31.3.3.** All new culverts, including all culvert replacements, shall be sized for 6.8 inches of rainfall per 24 hours and shall be based on run off resulting from maximum densities permitted by zoning.

**16-16.31.3.4.** All culverts, except those required for a controlled discharge, shall not be less than 18 inches in diameter when crossing streets, roadways and driveways.

**16-16.31.3.5.** For projects in the Central Business or General Business zoning districts that receive a Special Intensity Allocation under Section 16-16.38.3.1.c) of the Land Use Code, the detention shall be 13,600 cubic feet per acre of the total site. The release shall be between 2.2 CFS and 2.4 CFS per acre.

**16-16.31.3.6.** Where open basins are used for detention, the emergency overflow shall be designed to carry a minimum of 11.75 CFS per acre of total drainage to the basin.

**16-16.31.3.7.** Where an open basin is used, there shall be at minimum a four-foot-wide concrete channel sloped to the outlet at 1% grade. All areas of the basin must slope to the channel.

**16-16.31.3.8.** The maximum slope for all fills shall be 2:1 or flatter. Where possible, slopes should be 4:1 to allow for mowing.

**16-16.31.3.9.** Maintenance of all detention facilities shall be the responsibility of the property owner(s). Failure to properly maintain said facilities will result in the Town taking all necessary actions to maintain such facilities, including replacement if necessary, with all costs to be charged to the property owner(s).

**16-16.31.3.10.** In order to ensure that the design standards set forth herein are met and complied with, Engineering Certifications from a licensed professional Engineer shall be required to certify that the design for storm water release and retention meets the standards set forth herein, and, upon completion of the project, that construction was in accordance with the certified plans. The final certifications must be submitted to the Town prior to the Town issuing a Certificate of Occupancy.

**16-16.31.4.** An applicant shall have the right to seek a variance or waiver of the above specifications if said applicant is able to demonstrate to the Town that compliance with said specifications places an undue hardship on the applicant and that no other property owners would be adversely impacted by the applicant's failure to strictly comply with said specifications. The applicant's appeal shall be submitted to the Town Engineer whose recommendations shall be submitted to the Town Council for final decision.

**Section 16-16.32. Sedimentation and Erosion Control.** No zoning or special use permit may be issued and final plat approval for subdivisions may not be given with respect to any development

that would cause land disturbing activity subject to the jurisdiction of the Watauga County Erosion Control Officer or the North Carolina Sedimentation Control Commission, unless such officer or agency has certified to the Town that:

- a) Any permit required by such officer or agency has been issued or any erosion control plan required by such officer or agency has been approved: or
- b) Such officer or agency has examined the preliminary plans for the development, and it reasonably appears that any required permit or erosion control plan can be approved upon submission by the developer of more detailed construction or design drawings. However, in this case, construction of the development may not begin (and no building permits may be issued) until such officer or agency issues any required permit or approves any required erosion control plan.

**16-16.32.1.** For purposes of this section, *land disturbing activity* means any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. Sedimentation occurs whenever solid particulate matter, mineral or organic, is transported by water, air, gravity, or ice from the site of its origin.

**16-16.32.2.** The Watauga County Erosion Control Officer is authorized by resolution of the Blowing Rock Board of Commissioners to enforce within the Town the Watauga County Soil Erosion and Sedimentation Control Ordinance. This ordinance requires that before a developer undertakes any land disturbing activity that would result in the uncovering of one acre or more, an erosion and sedimentation control plan must be submitted to and approved by the Erosion Control Officer. However, any activity under the exclusive jurisdiction of the North Carolina Sedimentation Control Commission is exempt from these requirements. (See Section 16-16.32.3 below.)

**16-16.32.3.** The North Carolina Sedimentation Control Commission has exclusive jurisdiction over land disturbing activities that are:

- a) Conducted by the State;
- b) Conducted by the United States;
- c) Conducted by the persons having the power of eminent domain;
- d) Conducted by local government;
- e) Licensed by the State or the United States; or
- f) Funded in whole or in part by the State or the United States.

**Section 16-16.33. Purpose of the Watershed Protection Ordinance.** It is the purpose of this article to protect the quality of drinking water for the Town of Blowing Rock by setting standards for the development that occurs within designated Public Water Supply Watershed areas. It is further intended that the establishment of watershed regulations reflect the protection of critical environmental areas in accordance with the State of North Carolina's Water Supply Watershed Protection Rules.

**16-16.33.1. Authority and Enactment.** The Legislature of the State of North Carolina has, in Chapter 160A, Article 8, Section 174, General Ordinance Authority; and in Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental

units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Governing Board of Blowing Rock does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of Blowing Rock.

**16-16.33.2. Jurisdiction.** The provisions of this Article shall apply within the areas designated as a Public Water Supply Watershed by the N.C. Environmental Management Commission and shall be defined and established on the map entitled, "Watershed Protection Map of Blowing Rock, North Carolina" ("the Watershed Map"), which is adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this Article.

**16-16.33.3. Exceptions to Applicability.** Nothing contained herein shall repeal, modify, or amend any Federal or State law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this Article amend, modify, or restrict any provisions of the Code of Ordinances of the Town of Blowing Rock; however, the adoption of this Article shall and does amend any and all ordinances, resolutions, and regulations in effect in the Town of Blowing Rock at the time of the adoption of this Article that may be construed to impair or reduce the effectiveness of this Article or to conflict with any of its provisions.

**16-16.33.3.1.** It is not intended that these regulations interfere with any easement, covenants, or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.

**16-16.33.3.2.** Existing development, as defined in this Article, is not subject to the requirements of this Article. Expansions to structures classified as existing development must meet the requirements of this Article. However, the built-upon area of the existing development is not required to be included in the density calculations.

**16-16.33.3.3.** If a nonconforming lot of record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of this article if it is developed for single-family residential purposes.

**Section 16-16.34. Duties of the Watershed Administrator.** It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this article as follows.

**16-16.34.1.** The Administrator shall issue Watershed Protection Permits and Watershed Occupancy Permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.

**16-16.34.2.** The Administrator shall keep records of all amendments to the local Water Supply Watershed Protection Ordinance and shall provide copies of all amendments upon adoption to the Water Quality Section of the Division of Environmental Management.

**16-16.34.3.** The Administrator shall keep records of the jurisdiction's use of the provision that a maximum of ten percent (10%) of the protected area of WS-IV watersheds may be developed with new development at a maximum of seventy percent (70%) built-upon surface area. Records for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this

development option, and individual records for each project with the following information: location, number of developed acres, type of land use, and stormwater management plan (if applicable).

**16-16.34.4.** The Administrator is granted the authority to administer and enforce the provisions of this article, exercising the responsibility of the full police power of the Town. The Administrator, or a duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon them by this article.

**16-16.34.5.** The Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. The record shall be submitted for each calendar year to the Water Quality Section of the Division of Environmental Management on or before January 1<sup>st</sup> of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

**Section 16-16.35. Appeal from the Watershed Administrator.** Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Watershed Review Board.

**16-16.35.1.** An appeal from a decision of the Administrator must be submitted to the Watershed Review Board within thirty (30) days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

**16-16.35.2.** An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

**16-16.35.3.** The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent, or by attorney.

**Section 16-16.36. Establishment of Watershed Review Board; Powers and Duties.** The Blowing Rock Planning Board shall act as the Watershed Review Board on proposed plats of land subdivision and shall hear major and minor variance requests related to subdivisions within the designated Water Supply Watersheds. The Planning Board shall also hear cases concerning major and minor variances, vested rights, administrative reviews, and appeals involving the interpretation or application of this article in the designated Water Supply Watersheds.

**16-16.36.1. Administrative Review.** The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Administrator in the enforcement of this article.

**16-16.36.2. Variances.** The Watershed Review Board shall have the power to authorize, in specific cases, minor variances from the terms of this article as will not be contrary to the

public interests where, owing to special conditions, a literal enforcement of the article will result in practical difficulties or unnecessary hardship, so that the spirit of this article shall be observed, public safety and welfare secured, and substantial justice done. In addition, the Administrator shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

**16-16.36.2.1.** Applications for a variance shall be made on the proper form obtainable from the Administrator and shall include the following information:

- a) A site plan, drawn to a scale of at least one inch to forty feet indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; and surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of the person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.
- b) A complete and detailed description of the proposed variance, together with any other pertinent information that the applicant feels would be helpful to the Watershed Review Board in considering the application.

**16-16.36.2.2.** The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Watershed Administrator prior to a decision by the Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.

**16-16.36.2.3.** Before the Watershed Review Board may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case and shall include the factual reasons on which they are based.

**16-16.36.2.3.1.** There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this article. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:

- a) If the applicant complies with the provisions of this article, they can secure no reasonable return from, nor make reasonable use of, their property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of this article that will make possible the reasonable use of their property.
- b) The hardship results from the application of this article to the property rather than from other factors such as deed restrictions or other hardships.
- c) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

- d) The hardship is not the result of actions of an applicant who knowingly or unknowingly violates this article, or who purchases the property after the effective date of the Ordinance, and then comes to the Board for relief.
- e) The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others and would not promote equal justice.

**16-16.36.2.3.2.** The variance is in harmony with the general purpose and intent of this article and preserves its spirit.

**16-16.36.2.3.3.** In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

**16-16.36.2.3.4.** In granting the variance, the Board may attach thereto such conditions regarding the location, character, and features of the proposed building, structure, or use as it may deem advisable in furtherance of the purposes of this article. If a variance for the construction, alteration, or use of property is granted, such construction, alteration, or use shall be in accordance with the approved site plan.

**16-16.36.2.3.5.** The Watershed Review Board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

**16-16.36.2.3.6.** A variance issued in accordance with this Section shall be considered a Watershed Protection Permit and shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within twelve months from the date of the decision.

**16-16.36.2.3.7.** If the application calls for the granting of a major variance, and if the Watershed Review Board decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

- a) The variance application;
- b) The hearing notices;
- c) The evidence presented;
- d) Motions, offers of proof, objections to evidence, and rulings on them;
- e) Proposed findings and exceptions;
- f) The proposed decision, including all conditions proposed to be added to the permit.

**16-16.36.2.3.8.** The preliminary record shall be sent to the Environmental Management Commission for its review as follows.

**16-16.36.2.3.8.1.** If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

**16-16.36.2.3.8.2.** If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.

**Section 16-16.37. Establishment of Watershed Areas.** The purpose of this Section is to list and describe the watershed areas herein adopted.

- a) WS-II-CA (Critical Area)
- b) WS-IV-PA (Protected Area)

**Section 16-16.38. Watershed Areas Described.** WS-II Watershed Areas - Critical Area (WS-II-CA). In order to maintain a predominately undeveloped land use intensity pattern, single family residential uses shall be allowed at a maximum of one (1) dwelling unit per two (2) acres. All other residential and non-residential development shall be allowed at a maximum six percent (6%) built-upon area. New residual application sites and landfills are specifically prohibited.

**16-16.38.1. Allowed Uses:**

- a) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten (10) foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Animal operations greater than 100 animal units shall employ Best Management Practices by July 1, 1994 as recommended by the Soil and Water Conservation Commission.
- b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC II.6101-.0209).
- c) Residential development, including both single family and all other residential.
- d) Non-residential development, excluding: 1) the storage of toxic and hazardous materials unless a spill containment plan is implemented, 2) landfills, and 3) sites for land

application of residuals or petroleum contaminated soils. New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are either used, stored or manufactured on the premises.

**16-16.38.2. Density and Built-upon Limits:**

- a) New Single-Family Residential development shall not exceed one (1) dwelling unit per two (2) acres on a project-by-project basis. No residential lot shall be less than two (2) acres, except within an approved cluster development.
- b) All Other New Residential, Commercial and Industrial development shall not exceed six percent (6%) built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

**16-16.38.3. WS-IV Watershed Areas - Protected Area (WS-IV-PA).** Only new development activities that require an erosion/sedimentation control plan under State law or approved local government program are required to meet the provisions of this article when located in a WS-IV watershed. In order to accommodate moderate to high land use intensity, single family residential uses shall develop at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area.

**16-16.38.3.1. Uses Allowed:**

- a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
- b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC II.6101-.0209).
- c) Residential development.
- d) Non-residential development, excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented.

**16-16.38.3.2. Density and Built-upon Limits:**

- a) Single Family Residential development shall not exceed two (2) dwelling units per acre, as defined on a project-by-project basis. No residential lot shall be less than one-half (1/2) acre, except within an approved cluster development.
- b) All Other Residential, Commercial, and Industrial development shall not exceed twenty-four percent (24%) built-upon area on a project-by-project basis. However, non-residential development may occupy up to thirty-six percent (36%) built-upon area in areas of the General Business (GB), Central Business (CB), and Office Institutional (OI) zoning districts that do not have a curb and gutter street system. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.
- c) In addition to the development allowed under paragraphs (a) and (b) above, new non-residential development and expansions to existing non-residential development in the General Business (GB), Central Business (CB), and Office Institutional (OI) zoning districts may occupy up to ten percent (10%) of the protected area with up to seventy percent (70%) built-upon area on a project-by-project basis when approved as a

Special Intensity Allocation (SIA). On projects that do not require the issuance of a special use permit, the Watershed Administrator is authorized to approve SIAs consistent with the provisions of this article. On projects requiring the issuance of a special use permit, the Board of Commissioners is authorized to approve SIAs consistent with the provisions of this article. Projects must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters, and incorporate Best Management Practices to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

**Section 16-16.39. Cluster Development.** Clustering of development is allowed in all Watershed Areas under the following conditions.

**16-16.39.1.** Minimum lot sizes are not applicable to single family cluster development projects. Density or built-upon area for the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.

**16-16.39.2.** All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.

**16-16.39.3.** The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowner's association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

**Section 16-16.40. Buffer Areas Required.** A minimum 30-foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial stream bank or shoreline stabilization is permitted.

No new development is allowed in the buffer except for water dependent structures, other structures such as flag poles, signs, and security lights that result in only diminutive increases in impervious area, and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater Best Management Practices.

**Section 16-16.41. Rules Governing the Interpretation of Watershed Area Boundaries.** Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Map, the following rules shall apply.

**16-16.41.1.** Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.

**16-16.41.2.** Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the Town of Blowing Rock as evidence that one or more properties along these boundaries do not lie within the watershed area.

**16-16.41.3.** Where the watershed area boundaries lie at a scaled distance more than twenty-five (25) feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.

**16-16.41.4.** Where the watershed area boundaries lie at a scaled distance of twenty-five (25) feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.

**16-16.41.5.** Where other uncertainty exists, the Administrator shall interpret the Watershed Map as to location of such boundaries. This decision may be appealed to the Planning Board.

**Section 16-16.42. Existing Development.** Existing development as defined in this article, may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this article; however, the built-upon area of the existing development is not required to be included in the built-upon area calculations.

**16-16.42.1. Uses of Land.** This category consists of uses existing at the time of adoption of this article where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:

- a) When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
- b) Such use of land shall be changed only to an allowed use.
- c) When such use ceases for a period of at least one year, it shall not be reestablished.

**16-16.42.2. Reconstruction of Buildings or Built-Upon Areas.** Any existing building or built-upon area not in conformance with the restrictions of this article that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single family residential development, provided.

- a) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
- b) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

**Section 16-16.43. Watershed Protection Permit.** Except where a single-family residence is constructed on a lot deeded prior to the effective date of this article, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any zoning or building permit be issued nor shall any change in the use of any building or land be made until a Watershed Protection Permit has been issued by the Administrator. No Watershed Protection Permit shall be issued except in conformity with the provisions of this article.

**16-16.43.1.** Watershed Protection Permit applications shall be filed with the Administrator. The application shall include a completed application form and supporting documentation deemed necessary by the Administrator.

**16-16.43.2.** Prior to issuance of a Watershed Protection Permit, the Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this article.

**16-16.43.3.** No permit required under the North Carolina State Building Code shall be issued for any activity for which a Watershed Protection Permit is required until the Watershed Protection Permit has been issued.

**16-16.43.4.** A Watershed Protection Permit shall expire if a zoning or building permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

**Section 16-16.44. Watershed Occupancy Permit.** The Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this article have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.

**16-16.44.1.** A Watershed Protection Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with the application for a Watershed Protection Permit and shall be issued or denied within ten (10) days after the erection or structural alterations of the building.

**16-16.44.2.** When only a change in use of land or existing building occurs, the Administrator shall issue a Watershed protection Occupancy Permit certifying that all requirements of this article have been met coincident with the Watershed Protection Permit.

**16-16.44.3.** If the Watershed Protection Occupancy Permit is denied, the Administrator shall notify the applicant in writing stating the reasons for denial.

**16-16.44.4.** No building or structure which has been erected, moved, or structurally altered may be occupied until the Administrator has approved and issued a Watershed Protection Occupancy Permit.

**Section 16-16.45. Public Health, in General.** No activity, situation, structure or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety and welfare.

**Section 16-16.46. Abatement.** The Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.

**16-16.46.1.** The Administrator shall report all findings to the Watershed Review Board. The Administrator may consult with any public agency or official and request recommendations.

**16-16.46.2.** Where the Watershed Review Board finds a threat to water quality and the public health, safety and welfare, the Board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

**Section 16-16.47. Watershed Boundary Map.** The map showing the approximate boundaries of the Watershed Protection Area, which is available in the Planning Department.

**Section 16-16.48. Amendments.** Any amendment to this ordinance shall follow the procedures outlined in Article 23.

**16-16.48.1.** Under no circumstance shall any amendments, supplements, or changes be adopted that would cause this article to violate the watershed protection rules as adopted by the North Carolina Environmental Management Commission.

**16-16.48.2.** All amendments must be filed with the North Carolina Division of Environmental Management, North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.

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## **Article 17 - Signs**

**Section 16-17.1. Purpose.** The purpose of this Article is to promote the public health, safety, and welfare through a comprehensive system of reasonable, effective, and consistent sign standards and requirements. Consistent with this objective, the Town Council finds that Blowing Rock is an historic mountain-resort community that has traditionally depended upon a tourism-based economy. Tourists, in large part, are attracted to the history, natural environment, scenic beauty, and aesthetic character of the community.

A proliferation of signs in the Town would result in visual blight and unattractiveness and would convey an image that is inconsistent with a high-quality, resort environment. In order to preserve the quality, character, and economic vitality of the community, these sign regulations are intended to:

- a) Create a balance between the need to advertise, identify, and communicate and the desire to maintain a safe, healthful, and attractive resort community environment.
- b) Enhance the general welfare of the community by protecting property values and preserving the natural environment, the unique character, and the aesthetic integrity of the community. The preservation of Blowing Rock's appearance and natural beauty from excessive and obtrusive signs is a matter of critical importance to the Town because of its reliance on tourism.
- c) Enhance the identification of public and private buildings and the effectiveness of visual communication by controlling the number, location, size, appearance, and illumination of signs.
- d) Allow signs that are appropriate for the zoning district in which they are located and are consistent with the category of use to which they pertain.
- e) Permit signs that are compatible with their surroundings and that are consistent with the scenic beauty and aesthetic quality of the community.
- f) Improve pedestrian and traffic safety through the proper placement of signs.
- g) Protect the public from the dangers of unsafe signs, and require that signs be constructed, installed, and maintained in a safe and satisfactory manner.
- h) Lessen the confusion, visual clutter, and sight impairment that can be caused by the proliferation, improper placement, excessive illumination, and disproportionate sizes of signs when such signs are not properly controlled or regulated.

**Section 16-17.2. Applicability.** No sign shall be erected, constructed, placed, painted, enlarged, moved, used, illuminated, maintained, or substantially altered in the Town of Blowing Rock, including its Extra Territorial Jurisdiction (ETJ), except in conformance with the standards, procedures, and other requirements of this Article.

**Section 16-17.3. Certain Historic Signs Excluded from Regulation.** Because of their historical significance, the signs listed below are excluded from the regulations of this Article, other than safety and maintenance regulations. Such signs may be replaced; provided that each replacement sign is similar in size, materials, and appearance to the specific sign that is in place on the original date of its inclusion on the list of signs excluded from regulation.

- a) The historic sign providing direction to the Blowing Rock Attraction located along U.S. Highway 321 across from the Green Park Inn.

**Section 16-17.4. Prohibited Signs.** The following signs listed shall be prohibited:

**16-17.4.1.** Any sign that, by reason of size, location, shape, reflectivity, or manner of illumination, constitutes a traffic hazard or is otherwise detrimental to public safety.

**16-17.4.2.** Any sign that substantially interferes with the view necessary for motorists, pedestrians, or bicyclists to proceed safely through intersections, or to enter onto or exit from public streets, sidewalks, trails, private roads, or driveways.

**16-17.4.3.** Any sign that obstructs an official traffic sign, signal, or device.

**16-17.4.4.** Any sign that, because of its design, color, shape, size, or location, could cause it to be confused with official traffic signs or other public safety or warning signs erected by governmental agencies.

**16-17.4.5.** Any sign that revolves, or is animated, or that utilizes movement or apparent movement to attract the attention of the public. This prohibition shall include, but not be limited to, propellers, discs, banners, pennants, streamers, animated display boards, and flags, unless otherwise specifically permitted by this Ordinance.

**16-17.4.6.** Any sign with lights that flash, move, rotate, or flicker.

**16-17.4.7.** Any sign that is placed on or affixed to a registered motor vehicle or trailer that is parked in the public right-of-way, on public property, or on private property so as to be visible from the public right-of-way, where the purpose of the display is to attract the attention of the public. This prohibition shall not apply to a sign on a registered motor vehicle or trailer that is regularly and customarily used for transportation in the normal day-to-day operations of the entity to which it is registered.

**16-17.4.8.** Any sign that is located within a public right-of-way, except publicly owned or publicly authorized signs (for example, required traffic control signs and street name signs); or any sign (other than a publicly owned or publicly authorized sign) that is attached, affixed, or painted on any utility pole, light standard, tree, rock, or other natural feature. This prohibition shall not apply to subdivision identification signs that are authorized to be placed in the landscaped median of a public or private street.

**16-17.4.9.** Any sign that is portable or not securely attached to a structure or to the ground, including A-frame, sandwich board, sidewalk, or curb signs. This prohibition shall not apply to signs erected or placed by the Town of Blowing Rock, or to such signs authorized by Town Council for a Special Event.

**16-17.4.10.** Any inflatable signs or balloons.

**16-17.4.11.** Any sign displayed upon the roof, or extending above the roof line, of a building.

**16-17.4.12.** Any painted sign on a building wall or roof, with the exception of murals approved by the BRAAC and the Town Council.

**16-17.4.13.** Any illuminated tubing or strings of lights outlining property lines, open sales areas, rooflines, doors, and windows. This prohibition shall not apply during the period

beginning each year on November 15 and extending through the following January 15, nor shall it apply to decorative string white lighting during the period of January 15 through March 31 each year. In addition, decorative, white string lighting is also allowed in trees, bushes, landscaping, and along fences throughout the year.

**16-17.4.14.** Any sign that exhibits statements, words, or pictures of an indecent, obscene, or pornographic nature.

**16-17.4.15.** Any sign that obstructs or interferes with access to a window, door, sidewalk, or fire escape.

**16-17.4.16.** Any searchlight or beacon.

**16-17.4.17.** Any sign or sign structure that is structurally unsafe.

**16-17.4.18.** Any sign that incorporates a television screen, a computer screen, electronic images, or electronic characters. This prohibition shall not apply to public information signs erected or placed by the Town of Blowing Rock.

**16-17.4.19.** Any permanent sign constructed or installed on a parcel of land which does not also contain a permanent occupiable structure.

**Section 16-17.5. General Sign Regulations.** All signs shall comply with the following:

**16-17.5.1. Electrical Wiring.** All wiring to electric signs or free-standing equipment that lights a sign shall be installed underground.

**16-17.5.2. Applicable Building and Technical Codes.** All signs shall comply with applicable provisions of the North Carolina State Building Code and all other applicable sections of the Blowing Rock Town Code.

**16-17.5.3. Structural Stability.** Each sign shall be securely fastened to the ground or to some other substantial supportive structure so that there is virtually no danger that either the sign or the supportive structure may be moved by the wind or other forces of nature and cause injury to persons or property. Each sign shall meet the standards for wind loads for the Blowing Rock area as contained in the North Carolina State Building Code.

**16-17.5.4. Maintenance of Signs.** All signs and all components thereof, including but not limited to supports, braces, and anchors, shall be kept in a state of good repair. To ensure that signs are erected and maintained in a safe and attractive condition, the following maintenance requirements shall apply to all signs:

- a) A sign shall have no more than 10 percent of its surface area covered with disfigured, cracked, ripped, or peeling paint, poster paper, or other material for a period more than 15 consecutive days.
- b) A sign shall not have bent or broken sign faces, bent or broken supports, loose appendages or struts for a period of more than 15 consecutive days.
- c) Freestanding signs shall not tilt more than 10 degrees from a 90-degree vertical position for a period of more than 15 consecutive days.
- d) A sign shall not have weeds, vines, or other vegetation growing upon it, or obscuring the view of the sign from the street or right-of-way from which it is to be viewed, for a period of more than 15 consecutive days.

- e) An illuminated sign shall not have only partial illumination for a period of more than 15 consecutive days.

**16-17.5.5. Sign Base Landscaping Requirements.** Where the provisions of this Article require that a landscaped area be provided at the base of a sign, the following standards shall apply:

- a) At the time of installation, a minimum of 50% of the surface area of the landscaped bed shall be covered with live vegetation. The remaining 50% may consist of mulch, rock, or other natural landscaping materials
- b) Where shrubberies are utilized, at least 50% of the planted shrubs shall be evergreen varieties.

**16-17.5.6. Maintenance of Sign Base Landscaping.** Sign base landscaping areas shall be maintained in good condition at all times. The owners of the property and their agents, heirs, or assigns shall be responsible for the installation, preservation, and maintenance of all plantings and physical features. Any dead, unhealthy, or missing vegetation, or vegetation disfigured by severe pruning, shall be replaced.

**16-17.5.7. Unlawful Cutting of Trees or Shrubs.** No person may, for the purpose of increasing or enhancing the visibility of any sign, damage, trim, destroy, or remove any trees, shrubs, or other vegetation located:

- a) Within the right-of-way of any public street or road, unless the work is done pursuant to the express written authorization of the North Carolina Department of Transportation or the Zoning Administrator.
- b) In any area where such trees or shrubs are required to remain under the provisions of the Town Code, or a permit issued under this ordinance.

**16-17.5.8. Sign Materials, Colors, and Message.** Materials, colors, and shapes of proposed signs and sign structures shall be compatible with the related buildings. All signs shall be of sandblasted, routed, or carved wood, individual wood letters, or of high-density sign foam that have the appearance of sandblasted or carved wood and individual letters; stained or colored glass; gold leaf; bronze; or masonry, unless otherwise provided by this section. The minimum amount of relief on sandblasted, routed, or carved signs shall be one-quarter (1/4) inch. Sign structures and supports may be of stucco, natural and painted wood, brick, stone, or other materials with similar texture and appearance that are considered appropriate to the mountain resort character. Colors of paints, stains, and other finishes or materials shall be nature-blending, with no more than four colors, including black and white, used on any sign. Fluorescent colors are prohibited. Signs shall respect the overall architectural composition of the building and its scale, and not overwhelm the facade. Signs shall not cover up or interrupt major architectural features of a building.

**Section 16-17.6. Approval Procedures.** Except as otherwise provided in this Article, no sign shall be erected, constructed, placed, painted, displayed, enlarged, moved, illuminated, or substantially altered prior to the issuance of a permit authorizing such activity.

**16-17.6.1.** Applications for sign permits and master sign plans shall be submitted to the Administrator on the designated form. At a minimum, the application shall include the following information:

- a) Name, address, and telephone number of the applicant.
- b) Street address, parcel identification number and / or legal description of the premises or property upon which the sign is to be located.
- c) Two blueprints or drawings of the sign plans with color designation, dimensions, materials, letter style, type of illumination, and method of construction. Master sign plans may require additional information.
- d) For a ground sign or column sign, a scaled drawing or survey showing property lines, existing and proposed site improvements, the proposed sign location, and landscaping.
- e) For a wall, awning, window, or projecting sign, a scaled drawing showing the entire facade, the proposed sign location, and any existing signs on the building.
- f) Name of the person, firm, or corporation that will be constructing and/or erecting the sign.
- g) Written consent of the owner of the building, structure, or land upon which the sign is to be erected.
- h) When required, the application requesting an electrical permit for the proposed sign must be attached to the sign application.
- i) Such other supporting information that the Administrator may require to verify full compliance with all applicable provisions of this Article.

**16-17.6.2.** Each application for a sign permit or for approval of a master sign plan shall be accompanied by the applicable fees, as shall be established by the Town Council.

**16-17.6.3.** In the case of a lot occupied or intended to be occupied by multiple tenants (for example a shopping center), sign permits shall be issued in the name of the property owner or agent rather than in the name of the tenant requesting a particular sign.

**16-17.6.4.** The Administrator may authorize and approve the display of a temporary sign when there is a legitimate delay, beyond the applicant's control, in the construction or preparation of a permanent sign for a business or property. The temporary sign may only be displayed for a period of 90 days, or until the new sign is erected, whichever is less. Temporary signs approved pursuant to this Section shall meet the size and height standards for the permanent signs they are substituting for, and shall be composed of rigid material, other than corrugated metal or other low-quality material.

**Section 16-17.7. Master Sign Plan.** The intent of the Master Sign Plan is to promote a cohesive and consistent aesthetic theme for signage within multi-family and townhouse developments, planned unit developments, and multi-occupant nonresidential developments.

**16-17.7.1. Master Sign Plan Contents.** The following shall be contained in each Master Sign Plan application:

- a) Type and location of each sign
- b) Permitted sign materials
- c) Permitted dimensions / area of each sign
- d) Permitted sign shapes
- e) Permitted font styles for lettering
- f) Permitted mounting method for wall and projecting signs (including bracket style)
- g) Permitted sign colors (not to exceed three different colors, which must be chosen from

the Town's approved color chart)

**16-17.7.2. Effect of Master Sign Plan Approval.** Following the approval of a Master Sign Plan, no sign shall be erected, placed, painted, or maintained on the subject property, except in conformance with such plan. All owners, tenants, subtenants, and purchasers of individual units within the development shall comply with the approved plan. The provisions of the plan may be enforced in the same way as any other provision of this Article. In case of any conflict between the provisions of such a plan and any other provision of this Article, the more restrictive provision shall apply.

**16-17.7.3. Amendments to Master Sign Plans.** Following the initial approval of a Master Sign Plan, it may be amended only upon the application of all parties with ownership interest in the property covered by the plan. If an amendment is secured which affects the permitted style, materials, or colors of signs, then all signage shall be updated to meet the new standard within 180 days of the approval of the amended plan, as applicable to each sign.

**Section 16-17.8. Computation of 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.

**16-17.8.1.** If the sign consists of more than one section or module, all of the area, including that between sections or modules, shall be included in the computation of the sign area.

**16-17.8.2.** With respect to a two-sided, multi-sided, or three-dimensional sign, the sign surface area shall be computed by including the total of all sides designed to attract attention or communicate information that can be seen at any one time by a person from one vantage point. Without otherwise limiting the generality of the preceding statement, when two identical sign faces are placed back-to-back, so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure and are not more than 36 inches apart, the sign area shall be computed by the measurement of one of the faces.

**Section 16-17.9. Computation of Sign Height.** The height of a sign shall be computed as the distance between the average grade of the land beneath the sign and the top of the highest attached component of the sign.

**Section 16-17.10. Signs Permitted in All Zoning Districts.** The following signs are allowed in all zoning districts, subject to the standards outlined in this section and elsewhere in this Article, and do not require a permit, unless otherwise provided.

**16-17.10.1. Required Regulatory Signs.** All signs required to be displayed pursuant to a law, rule, regulation, or other mandate carrying the force of law, enacted by a governmental entity having jurisdiction within the Town or its ETJ, shall be permitted to be displayed in the location and manner prescribed in the applicable law, rule, or regulation.

**16-17.10.2. Town Government Signs.** Official signs erected by the Town of Blowing Rock, including, but not limited to, legal notices, traffic signs, directional signs, informational signs, and regulatory signs.

**16-17.10.3. Utility Regulatory Signs.** Official signs erected by public or private utilities to comply with regulatory standards and requirements for identifying the location of utility lines or providing public warning, provided such signs are located upon property owned or occupied by the utility, including within easements.

**16-17.10.4. Parking Lot Entrance Signs.** One (1) sign may be posted within five (5) feet of each outer edge of a driveway leading to a public or private parking area containing ten (10) or more delineated off-street parking spaces. Such signs shall not exceed four (4) square feet in area and three (3) feet in height. Such signs shall be of the same style, design, color, and materials as other permanent signs on the property.

**16-17.10.5. Incidental Motor Vehicle Signs.** Signs painted on or otherwise attached to registered motor vehicles that are regularly and actively used for transportation by the entity to which they are registered are permitted, provided that such vehicles shall not be parked on public or private property for the purpose of displaying the attached signage in circumvention of the standards of this Article.

**16-17.10.6. Temporary Freestanding Signs.** The following regulations shall apply to Freestanding Temporary Signs:

- a) The display of one (1) Temporary Freestanding Sign, not to exceed four (4) square feet in area and five (5) feet in height, shall be permitted per street frontage upon each parcel of land within the Town and its ETJ.
- b) One (1) additional Temporary Freestanding Sign shall be permitted to be displayed per street frontage on parcels larger than five (5) acres in size, where the street frontage exceeds 400 feet in length.
- c) The permitted period of display of a Temporary Freestanding Sign is unlimited; however, such signs shall be subject to the maintenance requirements of this Article.
- d) The limit on the number of permitted Temporary Freestanding Signs shall be periodically modified in accordance with the following: Beginning on the 30th day prior to the beginning of early voting for any scheduled primary or election occurring within the planning jurisdiction of this Ordinance, as established by the North Carolina Board of Elections, and ending the 10th day following the primary or election, the limit on the number of Temporary Freestanding Signs that may be displayed per parcel is increased to five (5) per street frontage. All other regulations associated with such signage shall remain in effect during such period of suspension. Following the end of such period of suspension of this regulation, the limit on the number of permitted Temporary Freestanding Signs shall be in force until the following period of suspension.
- e) In the General Business District, the maximum permitted size of Temporary Freestanding Signs is 16 square feet and eight (8) feet in height, subject to the following limitations:
  - i. The larger sign area and height shall only be permitted on parcels which do not contain any other temporary or permanent freestanding signs.
  - ii. The periodic modification of the limit on the number of signs provided for in d), above, does not apply to any sign exceeding six (6) square feet.

**16-17.10.7. Development Activity Signs.** One (1) sign, not exceeding 32 square feet in area and eight (8) feet in height, may be erected upon a site following the issuance of a building permit. Any sign erected pursuant to this provision shall be removed not later than 10 days following the issuance of the final occupancy permit for the site.

**16-17.10.8. Seasonal Outdoor Lighting Displays.** Strings of lights may be used for outline lighting or tree decoration during the period from November 15 through the following January 15. Strings of decorative white lights are permitted from January 15 through March 31, and strings of white lights are permitted as accent lighting in bushes, trees, and landscaping and along fencing throughout the year.

**16-17.10.9. Permanent Flag Displays.** Up to three (3) flags may be displayed simultaneously upon each parcel of land. The total area of all flags displayed on a single parcel shall not exceed 100 square feet, and no single flag shall exceed 60 square feet in area. The maximum permitted pole height is 30 feet above grade for freestanding poles, and 15' above grade for a pole attached to a building.

**16-17.10.10. Special Event Signs.** One (1) sign, not exceeding 16 square feet in area and six (6) feet in height, may be erected on each street frontage of a lot or site that has been approved for a Special Event by the Town Council. Such signage may be displayed beginning two (2) weeks prior to the date of the Special Event specified in the permit and shall be removed within three (3) days following the expiration of the permit.

**16-17.10.11. Public, Civic and Non-Profit Banner Displays.** Public, civic, and non-profit entities may display one (1) banner per street frontage upon property owned or leased by the entity for a period of up to 14 days, with a minimum of 30 days between the conclusion of one display and the beginning of a subsequent display. Banners displayed pursuant to this regulation shall not exceed 32 square feet in area.

**16-17.10.12. Interior Site Signs.** Signs which are not visible from public streets or adjacent properties are permitted.

**16-17.10.13. Interior Building Signs.** Any sign located inside of an occupiable portion of a building is permitted. This provision does not apply to Window Signs, as regulated in this Article.

**16-17.10.14. Supplemental Civic Signs.** In addition to any other sign(s) permitted by this Ordinance, a permanent ground or column sign may be erected on property occupied by a school, recreation facility, government facility, civic organization, or religious institution, provided that such sign is located at least 10 feet from a public right-of-way. Such signs shall not exceed 16 square feet in area and shall meet all other general requirements of this Article. Signs permitted under this provision shall be removed if the property ceases to be used by a qualified entity, as specified above. A sign permit shall be required prior to the erection of such sign.

**16-17.10.15. Commercial Occupancy Banner Displays.** One (1) banner may be displayed upon the wall of any building upon its initial occupation or re-occupation by a commercial enterprise. Such banner may be displayed for a period not to exceed 14 consecutive days, beginning up to 10 days prior to the day that it is initially open to the public for business. This

provision shall also apply to the re-opening of any commercial enterprise which relocates within the Town, or which re-opens in the same location following a renovation with permitted construction costs in excess of \$50,000. Banners shall not exceed 16 square feet in area. Banners are limited to no more than three (3) colors, which must be consistent with the Town's approved color chart. All banners shall be securely fastened to the wall upon which they are displayed to prevent waving or flapping in windy conditions.

**16-17.10.16. Commercial Anniversary Banner Displays.** One (1) banner may be displayed upon the wall of any building occupied by a commercial enterprise which has been in continuous operation within the Town for a period of five (5) years, and again upon achieving each subsequent 5-year anniversary. Such banners may be displayed for a period of 14 consecutive days within the 12-month period in which it attains the anniversary. Banners shall not exceed 16 square feet in area. Banners are limited to no more than three (3) colors, which must be consistent with the Town's approved color chart. All banners shall be securely fastened to the wall upon which they are displayed to prevent waving or flapping in windy conditions.

**16-17.10.17. General Incidental Signs.** Incidental signs smaller than one (1) square foot in area shall be permitted in all districts, provided such signs are not displayed in a manner that is purposefully intended to circumvent the sign display standards of this Article.

**Section 16-17.11. Signs Permitted in Residential Districts.** In addition to the signs allowed in all zoning districts (Section 16-17.6), the following signs shall be allowed in all residential zoning districts, subject to the standards set forth in this section and other applicable provisions of this Article:

**16-17.11.1. Residential Development Entrance Signs.** A ground sign may be located on one or both sides of each primary entrance into a single-family subdivision or multi-family development. A single side of any such sign may not exceed 16 square feet, nor may the total surface area of all such signs exceed 32 square feet (per primary entrance). The sign(s) shall be part of a decorative wood, brick, stone, or masonry wall of similar design compatible with the character of the subdivision or development. Each sign shall have a minimum of 50 square feet of landscaped area at the base of the sign. Any such sign shall be located at least 10 feet from any street right-of-way and may not exceed six (6) feet in height. Changeable copy is prohibited. Signs of this type shall require a permit.

Alternatively, a single ground sign may be located within the right-of-way of a primary entrance into the residential development, provided that the primary entrance is divided by a median that is a minimum of 50 feet long and 10 feet wide. The sign shall not exceed 16 square feet in surface area. The sign shall be part of a decorative wood, brick, stone, or masonry wall of similar design compatible with the character of the subdivision or development. Each sign shall have a minimum of 50 square feet of landscaped area at the base of the sign. Any such sign that is located within the median shall be setback at least 10 feet from the intersecting right-of-way line when projected across the entrance to the development and may not exceed six (6) feet in height.

Changeable copy is prohibited. Signs of this type shall require a permit, and an encroachment agreement when located within a public right-of-way.

In either alternative, the subdivision covenants shall provide that any subdivision sign and landscaping shall be perpetually maintained by the property owners within the subdivision.

**Section 16-17.12. Signs Permitted in the Non-Residential Zoning Districts.** The requirements and standards of this Section shall apply to signs within all non-residential zoning districts. In addition to the signs allowed in all zoning districts, the following signs shall be allowed in the non-residential zoning districts, subject to the standards set forth in this Section and other applicable provisions of this Article.

**16-17.12.1. Sign Options.** Each property within a non-residential zoning district that is developed and occupied by a non-residential use shall be permitted to display one (1) of the following types of signs. When located on a corner lot, one sign may be displayed from options a) and b), and one sign may be displayed from options c) and d) on the same street frontage, provided that no signs are displayed on any other street frontage.

- a) Ground-Mounted Sign
- b) Column Sign
- c) Wall Sign
- d) Awning Sign

Buildings displaying an awning sign or wall sign shall also be permitted to display a projecting sign, and each building or ground floor tenant space within a multi-tenant building shall be permitted to display a window sign, subject to the regulations contained herein.

**16-17.12.1.1. Ground-mounted Sign.**

- a) **Number Permitted.** Limited to one (1) sign per public street frontage, excluding alleys.
- b) **Dimensional Standards.** The height of the ground-mounted sign shall not exceed six feet and the height of its structure or support shall not exceed eight feet; the length of the sign shall not exceed 10 feet; and the sign area shall not exceed 35 square feet. In the General Business District, where a lot has frontage on a road with a speed limit greater than 35 miles per hour, the sign area of ground-mounted signs may be increased from 35 to 45 square feet.
- c) **Sign Base Standard.** The sign shall be attached to a structural base or planter box that is at least two feet high. A structural base shall be at least two feet longer than the dimensions of the sign; and a planter box shall be at least two feet wider and two feet longer than the dimensions of the sign.
- d) **Number of Sides.** Maximum of two sides per sign.
- e) **Permitted Location.** A ground-mounted sign shall be placed no closer to a street curb or edge of pavement than 10 feet or 50% of the building setback, whichever is less; provided that, in any event, the sign shall not be placed within the public right-of-way or obstruct a sidewalk or public walkway.
- f) **Landscaping Required.** At least 30 square feet of landscaped area shall be located at the base of each ground-mounted sign.

**16-17.12.1.2 Column Sign.**

- a) **Number Permitted.** Limited to one (1) sign per public street frontage, excluding alleys.
- b) **Dimensional Standards.** Within the Central Business District, no portion of the sign shall exceed eight feet in height and its structure or support shall not exceed 10 feet

in height. Within the other non-residential zoning districts, no portion of the sign shall exceed 10 feet in height and its structure or support shall not exceed 12 feet in height. The sign area of the column sign shall not exceed 45 square feet. In the General Business District, where a lot has frontage on a road with a speed limit greater than 35 miles per hour, the sign area of column signs may be increased from 45 to 60 square feet.

- c) **Sign Base Standard.** The sign shall be attached to a structural base or planter box that is at least two feet high. The base or planter box shall be at least two feet wider and two feet longer than the dimensions of the sign.
- d) **Permitted Location.** A column sign shall be placed no closer to a street curb or edge of pavement than 10 feet or 50% of the building setback, whichever is less; provided that, in any event, the sign shall not be placed within the public right-of-way or obstruct a sidewalk or public walkway. At least 30 square feet of landscaped area shall be located at the base of each column sign.
- e) **Topographic Height Allowance.** With respect to column signs in the General Business District, where the average ground elevation of the proposed sign location is below the road edge elevation of HWY 321 or 321-Bypass, the overall height of the sign may be increased to an elevation up to, and not to exceed, 10 feet above the road edge. In no case, however, may a sign be taller than 20 feet above the average ground elevation, nor shall the height of a sign structure exceed 22 feet above the average ground elevation. 50 percent of the sign height must be screened by landscaping when the sign is built according to the standards listed above.

**16-17.12.1.3. Wall Sign.**

- a) **Number Permitted.** Limited to one sign per business. However, where the business has frontage on more than one street, with building entrances on each street, one such sign will be allowed per street frontage meeting those requirements.
- b) **Permitted Area.** The sign area shall be limited to one square foot of sign area per linear foot of the tenant's contiguous exterior wall in the non-residential zoning districts. The sign surface area oriented toward a specific street shall not exceed the allocation derived from the building frontage on that street. The size of any attached wall sign shall not exceed 60 square feet. If a building does not front on a street, the sign area for the building shall be determined by the Administrator as if the building had street frontage.
- c) **Permitted Depth.** The sign shall not extend more than six inches from the building.
- d) **Permitted Location.** No portion of the sign shall extend above the parapet or eave line. A wall sign may be attached to an overhanging eave, but the sign must be at least seven feet above the surface of any pedestrian walkway underneath the sign.
- e) **Encroachment Permit Required.** No sign or supporting structure may be located over the traveled portion of any right-of-way, sidewalk, or public walkway without an encroachment permit.

**16-17.12.1.4. Awning Sign.**

- a) **Number Permitted.** Limited to one sign per business. However, where the business has frontage on more than one street, with building entrances on each street, one such sign will be allowed per street frontage meeting those requirements.

- b) **Display Area.** The sign message may be displayed only on the drop flap of the awning. Letters and graphics shall not exceed nine (9) inches in height. No portion of the sign message may be displayed on the “main sheet” of the awning.
- c) **Permitted Location.** The framing for the awning must be at least eight (8) feet above the ground or sidewalk and the skirt on the bottom of the awning must be at least seven (7) feet above the ground or sidewalk.

**16-17.12.1.5. Window Sign.**

- a) **Number Permitted.** One (1) window sign, applied directly to the surface of the window glass, shall be allowed per building or per individual ground floor tenant space in multi-tenant buildings.
- b) **Permitted Area.** Window signs shall not exceed 12 square feet nor fill up more than 20% of the window area, whichever is less.
- c) **Color.** Lettering and graphics may only be black, gold, or white.
- d) **Location.** Window signs are only permitted on ground floor storefront windows.
- e) **Temporary Window Signs Permitted.** In addition to the above, temporary window signs, constructed of paper, cloth, or similar material, are permitted. Such a sign shall be attached to the interior of a building window. The sign(s) may not cover more than 25% of the window in which they are placed. Signs must be removed within 15 days after placement. Temporary window signs are only permitted in ground floor windows.

**16-17.12.1.6. Projecting Sign.**

- a) **Number Permitted.** Limited to one sign per business. However, where the business has frontage on more than one street, with building entrances on each street, one such sign will be allowed per street frontage meeting those requirements.
- b) **Permitted Area.** The sign area shall be limited to four (4) square feet per side. The sign may not project more than four feet from the building.
- c) No portion of the sign shall extend more than ten (10) feet above ground level or extend above the parapet or eave line. The bottom of the sign must be at least seven (7) feet above the ground or sidewalk.

**16-17.12.1.7. Multiple Occupancy Buildings/Shopping Centers.**

- a) **Freestanding Sign Standard.** Where a lot or unified development contains a building with multiple tenants or a shopping center, a maximum of one (1) ground sign or column sign may be permitted at each principal point of access to the development from a collector street (limited to one (1) such sign per collector street). No other freestanding sign shall be permitted within the development, except as specifically provided, herein. The following size limitations apply to ground-mounted and column signs for multiple occupancy buildings and shopping centers:

| Classification                 | CB<br>Zoning District | GB<br>Zoning District | OI<br>Zoning<br>District | HMC<br>Zoning District |
|--------------------------------|-----------------------|-----------------------|--------------------------|------------------------|
| Multiple Occupancy<br>Building | 45 square feet        | 45 square feet        | 45 square<br>feet        | 45 square feet         |
| Shopping Center                | 45 square feet        | 70 square feet        |                          |                        |

Ground-mounted signs and column signs shall meet all other generally applicable requirements for the particular sign type.

- b) **Master Sign Plan.** Each tenant's individual signage shall comply with the master sign plan for the development.
- c) **Additional Signage Permitted.** The Master Sign Plan may allow for one (1) identifying sign for each upper story occupant or street level occupant that has no street frontage. That sign may be attached to the building at the point of access (either a wall sign or a projecting sign) or may be a freestanding sign if a sign attached at the point of building access would not be visible to the public. The maximum area of each tenant sign shall be limited to three (3) square feet for an attached sign and four (4) square feet for a freestanding sign. There shall not be more than one (1) additional freestanding sign per lot. Supplemental freestanding signs shall meet all other applicable requirements for ground or column signs.
- d) **Canopy Sign Standards.** Each shopping center that has a canopy shall be permitted to have identification signs located under the canopy, as specified in the Master Sign Plan. Such signs shall have a maximum sign area of four (4) square feet.

**16-17.12.1.8. Automotive Fuel Sales Supplementary Signage.**

- a) **Message Board Sign Accommodations.** Freestanding or wall-mounted signs located on the premises of a commercial establishment that retails automotive fuels are permitted an additional 10 square feet of sign area to accommodate a changeable message board. If a changeable message board is not included on the sign, it may not exceed the area permitted for all other signs of the specific type permitted in the district.
- b) **Canopy Signs Prohibited.** No signage may be displayed on any canopy that is erected for the purpose of providing cover for the pump islands.
- c) **Supplementary Wall Signage.** If the establishment includes a service station building, a convenience store, or other retail store, a wall sign may be erected on the building or store. The wall sign shall be governed by the applicable provisions herein.

**16-17.12.1.9. Information/Message Board Signs.**

- a) **Cultural Facilities Signage** A theater, auditorium, museum, or similar facility, whose primary function is to provide musical, cultural, dramatic, or motion-picture performances, may add a message board to its ground, column, or wall sign. The ground, column, or wall sign otherwise permitted for the business or property may be

increased by 20 square feet for the purpose of displaying the message board information. Any message board area shall have colors and materials that are similar to the sign itself. The changeable letters shall be securely fastened to the sign face and shall be neatly maintained.

- b) **Real Estate and Restaurant Supplemental Signage** In addition to signs otherwise permitted, restaurants and real estate agencies may have message boards to display information to the public. Restaurants may have a flush-mounted, attached, wall sign, no larger than three (3) square feet. Real estate agencies may have up to two (2) flush-mounted, attached, wall signs, no larger than six (6) square feet each, or one (1) freestanding sign not exceeding 12 square feet. The freestanding sign may be two-sided. Additional design criteria can be found in Appendix G.

**16-17.12.1.10. Menu Boards.** One ground-mounted menu board per site shall be permitted for drive-through windows at fast-food restaurants. Menu board signs shall be single sided, and the display area of the sign shall not be visible from a public right-of-way. The area of the sign shall not exceed 15 square feet, and that area shall be in addition to the allowable sign area for the building or premises. This sign may have a plastic face and be internally illuminated.

**16-17.12.1.11. Automated Teller Machine Signage.** Automated teller machines can be identified by one sign not to exceed six (6) square feet in area, which must be installed at the specific location of the ATM and shall be wall-mounted or on the ATM device. Such sign shall be in addition to the allowable sign area for the business. This sign may have a plastic face and be internally illuminated.

**16-17.12.1.12. Sign Illumination.** Unless otherwise provided, any of the signs authorized by this section to be erected within a non-residential zoning district may be illuminated. With the exception of signs for restaurant menu boards and ATM machines as provided above, any sign, if illuminated, shall have external illumination. Permitted external illumination shall include "halo" type illumination to outline individual raised sign elements (letters / graphics) from behind. Any other type of illumination shall not be permitted. Additional standards for sign illumination are set forth below:

- a) **Direction and Shielding.** Lighting directed toward a sign shall be designed and shielded so that it illuminates only the face of the sign and does not shine into any alley or road right-of-way or adjacent properties. The sign base and landscaping shall be designed to shield the light source so that it is not visible from any right-of-way or adjacent properties. The intensity of the light shall not exceed 20 foot-candles at any point on the sign face.
- b) **Steady Light Source Required.** The illumination shall provide a continuous, steady white light source. No illumination shall involve movement or cause the illusion of movement, except barber poles and signs containing time and temperature readings.
- c) **Residential Protection.** No sign within 150 feet of a residential zone may be illuminated between the hours of midnight and 6:00 a.m., except actual hours that the business is open for operation. This restriction shall not apply where the impact of such lighting beyond the boundaries of the property on which it is located is inconsequential.

- d) **Internal Illumination Restrictions.** Internally illuminated signs may not be illuminated during hours that the business is closed. This restriction shall not apply to vending machines, or other similar devices; nor shall the restriction apply to signs less than two (2) square feet.

**Section 16-17.13. Church, School, Hospital, or Public Facility Signs.** A ground, column, wall, or awning sign will be permitted for a church, school, community building, hospital, or other public building or facility, provided that the sign satisfies the applicable provisions for such signs. Such facilities shall be limited to one (1) sign per abutting street frontage. Window signs shall also be permitted in accordance with the general provisions for such signs.

**16-17.13.1 Supplemental Message Board Signage.** Each church, school, community building, hospital, or other public building or facility is authorized to erect a message board. The message board may be incorporated into the ground, column, or wall sign authorized in this Section; in which case the ground, column, or wall sign may be increased by 20 square feet for the purpose of displaying the message board information. Alternatively, the message board may be erected as a separate ground, column, or wall sign provided that the sign satisfies the applicable provisions for the specific type of sign and does not exceed 20 square feet of sign area. The message board, if any, shall have colors and materials that are similar to the primary sign for the property; and the colors and materials shall comply with Section

**16-17.12.1.** Any changeable letters shall be securely fastened to the sign face and shall be neatly maintained. The message board must be covered with tempered glass.

**16-17.13.2. Supplemental Building Entrance Signage.** Each church, school, community building, hospital, or other public building or facility may erect a sign at each entrance into the building. The sign shall consist of individual letters and/or graphics not exceeding nine (9) inches in height, although an emergency room entrance may be identified by individual letters and/or graphics of up to 12 inches in height.

**16-17.13.3. Illumination.** The signs permitted by this Section may be externally illuminated and shall comply with the general illumination standards.

**16-17.13.4. Master Sign Plan Required.** Where multiple buildings are arranged in a campus setting, a Master Sign Plan shall be required for all of the buildings on the campus.

**16-17.13.5. Visitors Center.** For the purposes of this section, the Visitors Center operated by the Chamber of Commerce shall be considered a public facility.

**Section 16-17.14. Appalachian Ski Mountain/Tourism-Related Welcome Center Sign.** Due to its unique tourism/directional-related significance based on skier traffic volume and nightly activities, the Appalachian Ski Mountain Welcome Center, or other visitor/tourism information entity, shall be allowed to construct a ground-mounted freestanding sign up to 18 feet from the ground. The overall length of the sign shall not exceed 17 feet. The sign face shall be limited to 70 square feet per side based on the posted speed limit exceeding 35 mph. The sign faces shall not be separated by more than 10 feet. All sides of the base of the sign shall be landscaped to a height not less than 3 feet above grade.

Unless otherwise specified herein, this sign shall meet the size, style, height, materials, and design criteria in Section 16-17.5.8 and shall be located outside the NCDOT designated right-of-

way. The sign colors are regulated by Conditional Use Permit No. 2014-04, approved on December 9, 2014.

The sign shall meet all requirements of this Article with regard to lighting, maintenance and safety.

## **Article 18 - Telecommunication Towers**

**Section 16-18.1. Authority.** This ordinance is enacted pursuant to the general zoning powers granted to the Town of Blowing Rock in Chapter 160D, Article 9, Part 3 of the General Statutes of the State of North Carolina, as well as the authority granted by Section 704 of the Telecommunications Act of 1996.

**Section 16-18.2. Purpose.** The purpose of this ordinance is to establish general guidelines and regulations governing the location, size, and design of telecommunication towers to be located within the Town of Blowing Rock.

**Section 16-18.3. Goals.** The goals of this ordinance are:

- a) To protect the health, safety, and welfare of the citizens of Blowing Rock.
- b) To encourage the location of towers in non-residential areas and minimize the total number of towers throughout the community.
- c) To encourage the joint use of new and existing tower sites.
- d) To minimize the adverse visual impact of towers and antennas.
- e) To enhance the ability of the providers of telecommunication services to provide such services to the community in a safe, effective, and efficient manner.

**Section 16-18.4. Applicability.** This Ordinance shall apply to the entire planning jurisdiction of the Town of Blowing Rock.

**Section 16-18.5. Permit Required.** Except as otherwise provided in this Ordinance, no telecommunication tower shall be erected, constructed, placed, enlarged, moved, used, maintained, or altered unless a special use permit has been approved by the Town Council and a tower permit has been obtained from the Administrator. No tower permit shall be issued that is not in compliance with this Ordinance. No building permit shall be issued for any tower that falls under the provisions of this Ordinance unless that tower has received a tower permit.

**16-18.5.1.** Non-commercial, individual use towers that are twenty feet in height or less shall require a Zoning Permit issued by the Administrator in lieu of the special use permit.

**16-18.5.2.** Existing towers owned by governmental agencies and designed for non-commercial emergency communications may be replaced with a tower equal in height (or shorter) to the replaced tower. All other ordinance provisions are applicable.

**16-18.5.3.** All applications for tower permits shall be submitted to the Administrator on the designated form. At minimum, the application shall include the following information:

- a) Name, address, and telephone number of the applicant.
- b) Street address, parcel number, and/or legal description of the premises or property upon which the tower is to be located.
- c) Written statement from the property owner of the proposed tower site authorizing the placement of the tower on the property.
- d) A site development plan prepared by a North Carolina Registered Land Surveyor and containing the following information:

- 1) Title block containing the tower owner's name, the property owner's name, and their addresses; scale; north arrow; vicinity map; tax parcel identification number(s); and the tower's latitude and longitude coordinates;
  - 2) The name, address, signature, and seal of the surveyor preparing the site development plan;
  - 3) The surveyed boundary lines of the parcel(s) that will contain the proposed tower and its fall area; land contours;
  - 4) The name, addresses, and tax parcel identification numbers of all owners of property abutting the subject property; and existing land uses surrounding the site;
  - 5) All structures located on the parcel, all existing and proposed roads and parking areas; and overhead utilities and utility connections within and to the proposed site;
  - 6) All existing towers on the property or any towers whose fall area encroaches onto the property;
  - 7) The proposed tower's location, the proposed fall area, and the location of all support structures and guy line anchors;
  - 8) The location of existing and/or proposed fences;
  - 9) The ground elevation of the proposed tower's base based on mean sea level as provided through FEMA control points or another similar source.
  - 10) The height of the vegetative canopy at the site.
- e) A preliminary tower design plan prepared by a North Carolina Registered Professional Engineer and containing the following information:
- 1) The tower owner's name and address, scale, north arrow, vicinity map, and tax parcel identification number;
  - 2) The name, address, signature, and seal of the engineer preparing the tower design plan;
  - 3) Information describing the tower height and design; a cross-section of the structure; engineering specifications detailing the construction of the tower, the base of the tower; the foundations for all guy line anchors, and support structures;
  - 4) A tower elevation showing the proposed painting and lighting schemes and all proposed antennas. Information describing the tower's capacity, including the number and type of antennas that it can accommodate.
  - 5) An elevation of each proposed set of guy line anchors;
  - 6) The proposed tower design loads;
  - 7) Designed fall zone for tower structure. (Note: All towers shall be set back from any surrounding property lines by a distance that is equal to the height of the tower unless a North Carolina Registered Engineer certifies that the fall zone of the tower and appurtenances will be within the setback area proposed.)
- f) Exterior lighting specifications.
- g) Detailed landscaping plan.
- h) A listing of the inventory of the applicant's existing towers within the Town and within a mile of the corporate limits, including specific information about the location, height, and design of each tower.

- i) A map or description of the service area(s) for the proposed tower's antenna(s). The applicant shall identify other possible alternatives within the service area for the proposed tower's antenna(s) and explain why the proposed tower is necessary and why existing towers and structures cannot accommodate the proposed antenna(s).
- j) If a proposed tower site is within one mile of the centerline of the Blue Ridge Parkway or within the viewshed of the Blue Ridge Parkway, the applicant shall inform the National Park Service of the proposed tower siting. Park Service recommendations shall be given reasonable consideration. The applicant must include documentation of the recommendations from the Park Service as well as any specific actions taken by the applicant, in response to those recommendations, to mitigate the impact of the proposed tower on the parkway. The Park Service shall be provided at least 45 days from the date of notification in which to respond. Failure of the Park Service to respond to the applicant within the 45 days shall satisfy the requirements of this subsection.
- k) The applicant must present evidence of fee simple ownership or a recorded leasehold interest from the record owner(s) of all property within a radius equal to the height of the tower. Any lease agreement must allow the leaseholder to enter into leases with other providers. Any lease agreement must specify that if the applicant/provider fails to remove the tower upon 180 days of its discontinued use, the responsibility for removal shall fall upon the landowner.
- l) The applicant shall identify any requested variances to the standards contained in this Ordinance, the reasons for seeking the variances, and any measures that are proposed to mitigate the possible adverse effects of the proposed variances.
- m) The application shall be accompanied by payment of a non-refundable processing fee in the amount of Two Hundred Fifty Dollars (\$250.00).

**Section 16-18.6. Issuance of Permit/Expiration.** A Special Use permit for a telecommunication tower shall expire five years after the effective date of the permit approval by the Town Council. A permittee wishing to continue the use of a specific tower must apply for a renewal of the special use permit at least six months prior to the expiration of the permit. In considering the request for the renewal of the Special Use permit, the Town Council shall apply all regulations then in effect and shall consider the impact that any changes in technology since the approval of the original permit may have had on the need for the tower or the tower's design.

Following the Town Council's approval of a Special Use permit for a proposed tower, and the permit owner's acknowledgment, acceptance, and execution of the special use permit, the Administrator shall issue a tower permit. If a Building Permit is not obtained for the construction of the tower within 12 months after the approval of the Special Use permit, or if the Special Use permit expires in accordance with the provisions of Section 16-4.14, then the tower permit shall be void.

**Section 16-18.7. Tower Approval Standards.** In addition to the other criteria set forth in the Land Use Code for the approval and issuance of Special Use permits by the Town Council, the Council shall apply the standards contained herein in considering a tower application.

**16.18.7.1.** Only monopole towers or alternative tower structures shall be permitted. An alternative tower structure, which employs high quality stealth technology appropriate for the proposed location, shall be required unless the applicant can demonstrate to the

satisfaction of the Town Council that an alternative tower structure is not practical or feasible. The comparative cost of the alternative tower structure or stealth technology shall not be the sole basis for determining whether it is practical or feasible.

**16.18.7.2.** At a minimum, any proposed tower shall provide a substantial additional needed service or benefit to the residents in Blowing Rock and/or residents in the Blowing Rock ETJ, that cannot otherwise be met. Applicants for new cellular towers, alternative tower structures, and commercial telecommunications antennas shall provide a map that indicates the signal strength or new service areas provided by the proposed tower/antennas.

**16.18.7.3.** The tower must be designed to meet the ANSI/EIA/TIA-222-E standards of minimum 100-year return wind speed and a minimum 2 inch of solid radial ice.

**16.18.7.4.** Towers shall be sited on a property so that all icefall or other debris from a potential tower failure can be contained on the property. The minimum distance from the tower's base to the property line shall be equal to the tower's height. However, the setback distance may be reduced by the Town Council where a North Carolina registered engineer has certified that the tower has been designed so that the fall zone will be within a reduced setback area. Guy wires and other support devices shall be no closer than 20 feet to any lot line.

**16.18.7.5.** A tower shall be set back from other on-site and off-site towers and supporting structures such that the failure or collapse of one tower will not strike another tower or its support structure.

**16.18.7.6.** The tower shall be designed and placed on the site in a manner that takes maximum advantage of existing trees, mature vegetation, and structures so as to (a) use the existing site features to screen the tower from prevalent views or (b) use existing site features as a background so that the tower blends into the background with increased site distances.

**16.18.7.7.** No artificial lighting shall be permitted on towers except as required to meet the minimum standards of the Federal Aviation Administration. If lighting is required, the Administrator shall review the available lighting alternatives and approve the design that would cause the least disturbance to surrounding properties and views. Security lighting at the base of a tower may be provided if the lighting is shielded so that no light is directed toward adjacent properties or rights-of-way.

**16.18.7.8.** The base of the tower shall be surrounded by a fence or wall at least eight feet in height unless the tower is constructed entirely on a building over eight (8) feet in height.

**16.18.7.9.** No tower or alternative tower structure located on any major mountain ridge shall have its highest point at an elevation greater than thirty (30) feet higher than the vegetative canopy immediately surrounding the base of the tower. No tower at a location other than a major mountain ridge shall have its highest point at an elevation greater than 100 feet from the ground.

**16.18.7.10.** The proposed tower shall be engineered and constructed to accommodate one additional antenna that is at least as large as the largest proposed antenna identified in Section 16-18.5.3(e)(4) and 16-18.6.1. Tower permit approval is conditioned upon the tower owner agreeing to allow the future co-location of other antennas upon the tower structure.

This provision shall not apply to monopole towers or alternative tower structures located on a major mountain ridge where the height restriction placed on the tower or alternative tower structure makes it infeasible or impractical to place more than one antenna on the tower or structure.

**16.18.7.11** In the event that a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the Town may require a third-party technical study (at the expense of the permittee or the proposed user, or both) to determine whether the tower could accommodate the proposed use.

**16.18.7.12** Failure to comply with the co-location requirements of this subsection may result in the denial of a permit request or the revocation of an existing permit.

**16.18.7.13** Towers shall be light gray or other blending color as approved by the Town, except when some other color may be required by applicable Federal or State regulations.

**16.18.7.14.** Property located within the tower's fall area shall not be subdivided so long as the tower is standing.

**16.18.7.15.** Existing mature tree growth and natural landforms on the tower site shall be preserved to the maximum extent possible. The tower and support structures shall be designed and placed on the site in a manner that will take maximum advantage of existing trees and mature vegetation so that the existing site features will be used to screen the tower and support structures from prevalent views.

**16.18.7.16.** Where a tower is proposed adjacent to a residential area, the setback space is to be used as a buffer zone. The buffer shall consist of a semi-opaque planting/landscaping screen as described in Section 16-22.5 and Appendix E of the Land Use Code. Trees shall be at least six to seven feet tall for evergreens and six (6) to eight (8) feet tall with a 1.5-inch caliper for deciduous trees at the time of planting and shall reach a height of no less than twenty 20 feet at maturity.

**16.18.7.17.** The applicant must be willing to allow the Town of Blowing Rock, the Blowing Rock Fire Department, the Blowing Rock Rescue Squad, or other public entities use of the tower under reasonable terms and conditions if a request is made for such use within thirty (30) days of the filing of the permit application, provided that tower load and frequency compatibility issues are satisfied.

**16.18.7.18.** Proposed towers shall not be permitted within the R-15, R-10, R-6, R-MH, or HMC zoning districts or within one-half mile of the centerline of the Blue Ridge Parkway. Within the other acceptable areas, the Town Council shall give preference to proposed tower sites that are not located on a major mountain ridge or within view of the Blue Ridge Parkway.

**16.18.7.19.** No tower sites shall be approved for any property located in an approved historic district, listed in the National Register of Historic Places, or listed by the North Carolina Department of Cultural Resources, Division of Archives and History, as eligible for National Register status.

**16.18.7.20.** The tower owner shall provide the Administrator with proof of general liability insurance in the minimum amount of One Million Dollars (\$1,000,000).

**16.18.7.21.** If the tower, or the equipment on the site, is of a type that will emit a continuous or frequent noise, the applicant must prove that sufficient action will be taken to prevent such noise from being audible to surrounding residents and businesses. Tower facilities and equipment must be operated so that noise levels are less than 45dB as measured from the property line nearest to the tower facilities.

**16.18.7.22.** The applicant shall comply with federal standards for radio frequency emissions. The applicant shall ensure that the tower/antennas will not cause localized interference with the reception of area television or radio broadcasts. If on review, the Town finds that the tower/antenna interferes with such reception, and if the interference is not corrected within sixty (60) days, the Town may revoke or modify the special use permit.

**16-18.7.1.** New towers shall meet the following distance separation requirements from existing towers, based upon the height of the existing and proposed towers**16-18.7.2.** A sign identifying the owner(s) and operator(s) of the tower and an emergency telephone number shall be placed in a clearly visible location on the premises of the tower.

| New Towers                                    | Existing Towers                               |  |
|---|---|--|
|   | <i>Towers in Excess of 100 Feet in Height</i> | <i>Towers Less Than 100 Feet in Height</i> |
| <i>Towers in Excess of 100 Feet in Height</i> | 1500 feet of separation                       | 750 feet of separation                     |
| <i>Towers Less Than 100 Feet in Height</i>    | 750 Feet of separation                        | 750 feet of separation                     |

**16-18.7.3.** The tower must meet or exceed current standards and regulations of the Federal Aviation Administration, the Federal Communications Commission, and any other agency of the federal government with the authority to regulate towers and antennas.

**16-18.7.4.** Mobile or immobile equipment not used in direct support of a tower facility shall not be stored or parked on the site of a telecommunication tower, unless repairs to the tower are being made.

**Section 16-18.8. Denial of Permit.** In accordance with the Telecommunications Act of 1996, any decision by the Town Council denying a request for permission to install or construct a wireless telecommunication facility must be in writing and must be based on evidence in a written record before the Council.

**Section 16-18.9. Continued Compliance Required.** All permits for the erection of a tower are issued in reliance upon a presumption that the tower will in fact conform to the plans that are submitted as the basis for the permit. Once erected, the tower shall at all times be maintained in compliance with the provisions of Section 16-18.7 and the Special Use permit.

**16-18.9.1.** To ensure the structural integrity of towers, the owner of a tower shall ensure that it is constructed and maintained in compliance with standards contained in the applicable

State building codes and the applicable standards for towers that are published by the Electronic Industries Association (EIA), as amended from time to time.

**16-18.9.2.** At least every 12 months, the tower shall be inspected at the owner's expense by an expert who is regularly involved in the maintenance, inspection, and or erection of telecommunication towers. At a minimum, this inspection shall be conducted in accordance with the tower inspection check list provided in the EIA Standard 222, "Structural Standards for Steel Antenna Towers and Antenna Support Structures". A copy of such inspection record shall be forwarded to the Administrator.

**16-18.9.3.** If the Administrator concludes that a tower fails to comply with the State building codes and/or the EIA standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such codes and standards. If the owner fails to bring such tower into compliance within the 30 days, the Town Council may order the removal of the tower at the owner's expense.

**Section 16-18.10. Removal of Abandoned Towers.** Any antenna or tower must be removed within 180 days of the date upon which it ceases to be in active use.

**Section 16-18.11. Standards for Commercial Wireless Telecommunications Antennas.** The following standards for commercial wireless telecommunications antennas exclude non-commercial antennas, radio and television signals, and non-commercial satellite dishes.

**16-18.11.1.** Antennas mounted to support structures (towers, buildings, utility poles, etc.) shall not exceed 8 feet in total length and shall not extend more than 6 feet above the top of the support structure.

**16-18.11.2.** Efforts shall be made to utilize support structures that offer the most concealment from public view. The Administrator shall have the final discretion on the approval of support structures and their locations for proposed antenna mounts.

**16-18.11.3.** Equipment cabinet and hardware colors shall match the support structure colors. Antennas colors shall be light gray or other blending color and approved by the Administrator.

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## Article 19 - Adult Business Establishments

**Section 16-19.1. Purpose.** It is the purpose of this Article to regulate adult business establishments in order to promote the health, safety, morals, and general welfare of the Town of Blowing Rock, as well as to establish reasonable and uniform regulations and licensing requirements to prevent the harmful location and concentration of adult business establishments in Blowing Rock. Adult business establishments, because of their very nature, are recognized as having serious objectionable operational characteristics. Studies and experiences that are relevant to North Carolina have shown that lower property values and increased crime rates tend to accompany and are brought about by adult business establishments. The Board of Commissioners finds that regulation of these uses is necessary to ensure that these adverse secondary effects do not have harmful impacts on the health, safety, morals, welfare, or peace and dignity of the Town and do not contribute to the blighting of surrounding neighborhoods.

**16-19.1.1.** The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

**16-19.1.2.** This ordinance represents a balancing of the legitimate ends of the community by imposing an incidental, content-neutral, place, time, and manner regulation of adult business establishments, without limiting alternative avenues of communication; and, at the same time, requiring the business to carry its share of the financing, administrative, and enforcement activities.

**Section 16-19.2. Findings.** Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and reports made available to the Board, and on findings incorporated in the cases of *City of Reton v. Playtime Theatres, Inc.*, 475 U.S.41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), and on studies in other communities, including, but not limited to, Phoenix, Arizona; Garden Grove, California; Los Angeles, California; Whittier, California; Indianapolis, Indiana; Minneapolis, Minnesota; Cleveland, Ohio; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Houston, Texas; and Seattle, Washington; and also on the findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the Board makes the following findings.

**16-19.2.1.** Adult business establishments lend themselves to ancillary unlawful and unhealthy activities, the control of which elsewhere presents challenges to the operators of such establishments. Further, there is presently no mechanism in this Town to make the owners of such establishments responsible for the activities that would occur on their premises.

**16-19.2.2.** Certain employees of adult business establishments defined in this ordinance as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

**16-19.2.3.** Sexual acts, including masturbation, and oral and anal sex, occur at adult business establishments, especially those that provide poorly lit, overly crowded, private or semi-private areas, booths, or cubicles for viewing films, videos, or live sex shows.

**16-19.2.4.** Persons frequent certain adult theatres, adult arcades, and other adult business establishments for the purpose of engaging in sex within the premises of such establishments.

**16-19.2.5.** At least 50 communicable diseases may be spread by activities occurring in adult business establishments, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, and hepatitis B.

**16-19.2.6.** The surgeon general of the United States in a report of October 22, 1986, has advised the American public that AIDS and HIV infections may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to the newborn.

**16-19.2.7.** According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

**16-19.2.8.** Sanitary conditions in some adult business establishments are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

**16-19.2.9.** Numerous studies and reports have determined that semen is found in the areas of adult businesses where persons view "adult" oriented films.

**16-19.2.10.** The findings noted in paragraphs number 1 through 9 raise substantial governmental concerns.

**16-19.2.11.** Adult business establishments have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.

**16-19.2.12.** A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the adult business establishments. Further, such a licensing procedure will establish an incentive for the owners and operators to see that the adult business establishment is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the Town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

**16-19.2.13.** Prohibition of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult business establishments.

**16-19.2.14.** Requiring licensees of adult business establishments to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

**16-19.2.15.** The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of adult business establishments, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

**16-19.2.16.** It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding employees who may engage in the conduct that this ordinance is designed to prevent or who are likely to be witnesses to such activity.

**16-19.2.17.** The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational concern that the applicant may engage in that conduct in contravention of this ordinance.

**16-19.2.18.** The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct that leads to the transmission of sexually transmitted diseases.

**16-19.2.19.** The general welfare, health, morals and safety of the citizens of the Town will be promoted by the enactment of this ordinance.

**Section 16-19.3. Classification of Adult Business Establishments.** Adult business Establishments are classified as follows:

- a) Adult arcades;
- b) Adult bookstores, adult novelty stores, or adult video stores;
- c) Adult cabarets;
- d) Adult motels;
- e) Adult motion picture theaters;
- f) Adult theaters;
- g) Escort agencies;
- h) Nude model studios; or
- i) Sexual encounter centers.

**Section 16-19.4. Licenses Required.** It shall be unlawful for any person to operate or maintain an adult business establishment unless the owner or operator thereof has obtained an adult establishment license from the Town. It shall also be unlawful for any person to operate such business after such license has been revoked or suspended by the Town or has expired.

**16-19.4.1.** It shall be unlawful for any person who operates an adult business establishment to employ a person to work or perform for the adult business establishment who is not licensed as an adult establishment employee by the Town.

**16-19.4.2.** It shall be unlawful for any person to obtain employment with an adult business establishment without having first obtained an adult establishment employee license from the Town.

**16-19.4.3.** It shall be unlawful for any person who operates an adult business establishment to allow any person to perform or participate in any contest or exhibition who does not have a valid and current adult establishment employee license from the Town.

**16-19.4.4.** It shall be prima facie evidence that any adult establishment that fails to have posted an adult establishment license, in the manner required by this ordinance, has not obtained such a license.

**Section 16-19.5. License Fees and Terms.** Terms of all licenses required under this ordinance shall be for a maximum period of twelve months, starting on or after July 1 and ending the following June 30. The application for a license shall be accompanied by payment in full of the fees referred to in this ordinance and established by the Board of Commissioners. Payment shall be by certified check, cashier's check, or money order. No application shall be considered complete until all such fees are paid.

**16-19.5.1.** Licenses shall be issued for a specific location and/or person and shall be non-refundable and non-transferable.

**16-19.5.2.** The license fees shall be as established by the Board of Commissioners from time to time and recorded in the minutes of the meeting at which they were approved.

**Section 16-19.6. Application Procedures For Adult Business Establishment License.** An application for license shall be made on a form provided by the Administrator. All applicants shall be qualified according to the provisions of this ordinance. The application may request, and the applicant shall provide, such information (including fingerprints) as to enable the Administrator to determine whether the applicant meets the qualifications established in this ordinance.

**16-19.6.1.** All persons desiring to secure a license to conduct, operate, or maintain an adult establishment under the provisions of this ordinance shall make a verified application to the Administrator. Any application shall be submitted in the name of the person proposing to conduct, operate or maintain the adult establishment. If the person who wishes to operate the adult establishment is an individual, then that person must sign the application as the applicant. If the adult establishment will be operated by a legal entity other than an individual, then each individual who has a two percent (2%) or greater financial interest in the business must sign the application for a license. Each such applicant must be qualified under the terms of this ordinance to operate an adult establishment and each applicant will be considered a licensee if a license is granted.

**16-19.6.2.** The completed application for an adult establishment business license shall contain the following information and shall be accompanied by the documents listed herein.

- a) If the applicant is an individual, the individual shall state their legal name and submit proof that he or she is at least 21 years of age. If the applicant is a partnership, the partnership shall state its complete name, the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any. If the applicant is a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors, and principal stockholders,

the name of the registered corporate agent, and the address of the registered office for service of process.

- b) The applicant's full name and any aliases or other names by which the applicant is known or which the applicant has used at any time. The applicant's addresses for the past five years, any business and home phone numbers, occupation, date and place of birth, social security number, driver's license number, and a recent (within last two years) photograph.
- c) The name of the adult establishment, the single classification of license for which the applicant is filing, a description of the adult entertainment to be performed on the licensed premises, the name of the owner of the premises where the adult establishment will be located, and the Watauga County or Caldwell County parcel identification number (PIN) of the parcel(s) on which the business will reside. If the applicant intends to operate the business under a name other than that of the applicant, he or she must state the fictitious name and submit the required registration documents.
- d) If the person identified as the fee owner of the tract of land in subsection (3) is not also the owner of the establishment, then the owner/applicant shall provide the lease, purchase contract, purchase option contract, lease option contract, or other document evidencing the legally enforceable right of the owner or proposed owner of the adult establishment to possess and use the property for the operation of the adult establishment.
- e) A current certificate and straight-line drawing prepared within thirty (30) days prior to the application by a registered land surveyor accurately depicting the property lines and the structures containing any existing adult business establishments within one thousand (1,000) feet of the property to be certified; the property lines of any established religious institutions, schools, nursing homes, daycare establishments, libraries, or public parks or recreation areas within one thousand (1,000) feet of the property to be certified, and the location of all residential zoning districts within three hundred (300) feet of the property to be certified. For the purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
- f) A sketch or diagram showing the configuration of the premises, including a statement of the total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
- g) Whether any applicant, or any person residing with any applicant, has been convicted of a specified criminal activity as defined in this ordinance; and, if so, the specified criminal activity involved, and the date, place, and jurisdiction of each.
- h) A listing of all locations where the applicant, or a person residing with the applicant, currently has or previously had within the past five years a license under this ordinance or other similar adult business establishment ordinance from another city or county. Also, a statement whether the applicant, or a person residing with the applicant, has had a previous license under this ordinance or other similar adult business establishment ordinance from another city or county denied, suspended, or revoked, including the name and location of the establishment for which the permit was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation.

- i) Whether the applicant, or a person residing with the applicant, has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that has had a previous license under this ordinance or other similar adult business establishment ordinance from another city or county denied, suspended, or revoked, including the name and location of the establishment for which the permit was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation.
- j) Whether the applicant, or a person residing with the applicant, holds any other licenses under this ordinance or other similar adult business establishment ordinance from another city or county; and, if so, the names and locations of such other licensed businesses.
- k) If the applicant is a corporation, a certificate of existence issued by the North Carolina Secretary of State is required.
- l) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate an adult business establishment in this or any other county, city, state, or country; has ever had a license, permit, or authorization to do business denied, revoked, or suspended; or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
- m) A statement signed under oath that the applicant consents to investigation of their background by the Town, to include fingerprinting; and that the applicant agrees to furnish within ten (10) days, at the applicant's expense, a criminal history from the clerk of court of any county in which the applicant has resided during the five (5) preceding years.
- n) A statement signed under oath that the applicant has personal knowledge of the information contained in the application, that the information contained therein is true and correct, and that the applicant has read the provisions of this ordinance regulating adult establishments.

Failure to provide the information required by this subsection shall constitute an incomplete application and it shall not be processed until complete.

**16-19.6.3.** If an applicant wishes to operate an adult business establishment, other than an adult motel, that shall exhibit on the premises, in a viewing room or booth of less than one-hundred-fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment that depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section 16-19.15.

**16-19.6.4. Applications For Adult Business Establishment Employee License.** All persons desiring to secure a license to be an adult business establishment employee shall make a verified application to the Administrator. The application shall be submitted on a form to be provided by the Administrator, and shall contain the following information:

- a) The applicant's full name, any aliases, or other names (including "stage" names) by which

the applicant is known or which the applicant has used at any time; present residence address and telephone number; present business address and telephone number; past residence and business addresses for the last five years; date and place of birth; driver's license number; and social security number.

- b) The name and address of the adult establishment where the applicant intends to work as an employee.
- c) A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance; and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
- d) A current color photograph, which clearly shows the applicant's face, and which has been taken within the last two years.
- e) The applicant shall submit to fingerprinting by the Blowing Rock Police Department. The fingerprinting card shall be submitted to the S.B.I. for processing. Returned fingerprint cards shall be kept on file in the Blowing Rock Police Department.
- f) Documentation suitable to the Administrator that the applicant has attained the age of 21 years at the time the application is submitted.
- g) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate an adult business establishment in this or any other county, city, state, or country; has ever had a license, permit, or authorization to do business denied, revoked, or suspended; or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
- h) A statement signed under oath that the applicant consents to a background check by the Town. The applicant must also agree to furnish within ten days, a criminal background check from the clerk of court of any county in which the applicant has resided within the five preceding years.

Failure to provide the information required by this subsection shall constitute an incomplete application and it shall not be processed until complete.

**Section 16-19.6.5. Issuance of License.** Upon submission of a complete application and payment of the appropriate license fee, the application shall be referred to the appropriate Town departments for an investigation to be made on such information as is contained in the application. The investigation process shall be completed within thirty calendar days from the date that the completed application is filed.

**16-19.6.5.1.** After the investigation of an application for an adult business establishment license is complete, the Administrator shall issue the license, unless he or she determines by a preponderance of the evidence that one or more of the following findings is true, whereupon the application must be denied:

- a) An applicant is under 21 years of age.
- b) An applicant is overdue in payment to the Town of taxes, fees, fines, or penalties assessed against or imposed upon a person in relation to any business.

- c) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
- d) An applicant or a person with whom the applicant is residing has been denied a license by the Administrator to operate an adult business establishment within the preceding twelve months or whose license to operate an adult business establishment has been revoked by the Administrator or by another comparable jurisdiction within the preceding twelve months.
- e) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this ordinance.
- f) The premises to be used for the adult business establishment have not been approved by the Watauga County Health Department, Blowing Rock Fire Department, Blowing Rock Building Inspector, or the Blowing Rock Planning Department as being in compliance with applicable laws and ordinances.
- g) The license fee required by this ordinance has not been paid.
- h) The requested license will be used in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this ordinance.
- i) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.
- j) The applicant for the adult business establishment has not received a special use permit from the Board of Commissioners for the proposed business.
- k) There is an existing adult business establishment in the building, premises, structure, or other facility where the proposed adult business establishment would be located; and the proposed establishment would be in addition to the existing establishment.

The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the adult business establishment, and the classification for which the license is issued pursuant to Section 16-19.3 of this ordinance. An adult business establishment license shall be issued for only one classification as found in Section 16-19.3.

**16-19.6.5.2.** After the investigation of an application for an adult business establishment employee license is complete, the Administrator shall issue the license, unless he or she determines by a preponderance of the evidence that one or more of the following findings are true, whereupon the application must be denied:

- a) The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
- b) The applicant is under the age of twenty-one years.
- c) The applicant has been convicted of a specified criminal activity as defined in this ordinance.
- d) The requested license will be used in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this ordinance.

- e) The applicant has had an adult business employee license revoked by the Administrator or by another comparable jurisdiction within two years of the date of the current application.
- f) The license fee required by this ordinance has not been paid.

**16-19.6.5.3.** Each such determination and denial shall be documented in writing, and a copy of which shall be mailed to the applicant by first class mail to the address shown on the application.

**16-19.6.5.4.** Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section 16-19.10.

**16-19.6.5.5.** Any license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the adult business establishment.

**Section 16-19.7. Fees.** Every application for an adult business establishment license (whether for a new license or for the renewal of an existing license) shall be accompanied by a One Thousand Dollar (\$1,000.00) non-refundable application and investigation fee.

- a) In addition to the application and investigation fee required above, every adult business establishment that is granted a license (new or renewal) shall pay an annual non-refundable license fee of One Thousand Dollars (\$1,000.00) before the license is issued by the Administrator.
- b) Every application for a new adult business employee license shall be accompanied by a Two Hundred Fifty Dollar (\$250.00) non-refundable application, investigation, and license fee.
- c) In addition to the application and investigation fee required above, every adult business employee that is granted a license shall pay an annual, non-refundable license fee of Two Hundred Fifty Dollars (\$250.00) before the license is issued by the Administrator.
- d) Any fee 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)

**Section 16-19.8. License Posting and Display.** Every person licensed under this ordinance as an adult business establishment shall post such license in a conspicuous place on the adult establishment premises so that it can be readily available for inspection by Town authorities responsible for enforcement of this ordinance and can be readily observed by patrons of the adult establishment.

Every person holding a license as an employee shall post their license in the work area on the adult establishment premises so that it can be readily available for inspection by Town authorities responsible for enforcement of this ordinance and can be readily observed by patrons of the adult establishment.

**Section 16-19.9. Inspection.** An applicant or licensee shall permit representatives of the Blowing Rock Police Department, Fire Department, and Planning and Inspections Department, or other Town departments or agencies, to inspect the premises of the adult business establishment for the purpose of insuring compliance with the law.

A person who operates an adult business establishment, agent or employee shall commit a misdemeanor if he refuses to permit such lawful inspection of the premises.

**Section 16-19.10. License Denial, Suspension, or Revocation; Appeal.** The Administrator shall conduct a hearing to determine whether a license should be suspended or revoked upon receipt of allegation or knowledge that any of the following has occurred:

- a) The owner or operator of an adult establishment or the holder of an employee license has violated or knowingly allowed or permitted the violation of any of the provisions of this ordinance;
- b) There have been recurrent violations of the provisions of this ordinance that have occurred under circumstances that the owner or operator of an adult establishment knew or should have known that such violations were committed;
- c) The license was obtained through false statements in the application for the license or renewal thereof;
- d) The license has been materially altered or defaced or is being or was used by a person other than the license holder or at a location other than that identified on the license or for a use or type other than that for which the license was issued;
- e) The licensee failed to make a complete disclosure of all information in the application for such license or renewal thereof;
- f) The owner, operator, any partner, any corporate officer or director holding an adult establishment license has become disqualified from having a license by a conviction as provided in this ordinance;
- g) The holder of an employee license has become disqualified from having a license by a conviction as provided in this ordinance;
- h) The owner, operator, or employee of any adult establishment has refused to allow an inspection of the establishment as authorized by this ordinance;
- i) A licensee has allowed possession, use, or sale of controlled substances on the premises;
- j) A licensee has allowed prostitution on the premises;
- k) A licensee operated the adult business establishment during a period of time when the licensee's license was suspended;
- l) Except in the case of an adult motel, a licensee has allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises;
- m) A licensee is delinquent in payment to the Town for any taxes or fees past due.

**16-19.10.1.** At the hearing, the licensee shall have the opportunity to be heard, to present evidence, and to be represented by legal counsel. Based upon the evidence produced at the hearing, the Administrator shall take, within ten working days after the hearing, any of the following actions:

- a) Suspend the license for up to ninety (90) days;
- b) Revoke the license;
- c) Place the license holder on administrative probation for a period up to one year on the condition that no further violations occur during the period of probation;
- d) Take no action.

**16-19.10.2.** The Administrator's decision shall be documented in writing, and a copy of the decision shall be sent immediately to the licensee by certified mail.

**16-19.10.3** In the event of the denial of a license application, or the suspension or revocation of an existing license, or the placement of a licensee on administrative probation, the applicant or licensee shall have the right to appeal that determination to the Blowing Rock Board of Adjustment within thirty days of receipt of the notice of denial, suspension, revocation, or probation.

**16-19.10.4** In the event the Board of Adjustment upholds the Administrator's decision, the applicant or licensee shall have the right to appeal that determination to the Superior Court of Watauga County within thirty days of receipt of notice of the decision.

**16-19.10.5.** When the Administrator revokes a license, the revocation shall continue for one year, and the licensee shall not be issued an adult business establishment license for one year from the date that the revocation became effective.

**Section 16-19.11. Transfer of License.** A licensee shall not transfer their license to another, nor shall a licensee operate an adult business establishment under the authority of a license at any place other than the address designated in the application.

**Section 16-19.12. Location of Adult Business Establishments.** An adult business establishment may be permitted as a special use in the General Business (GB) zoning district subject to the requirements contained herein and elsewhere in this Article.

**16-19.12.1.** The adult business establishment may not be located or operated within one thousand (1,000) feet of:

- a) A church, synagogue, mosque, temple, or other building that is used primarily for religious worship and related religious activities;
- b) A public or private school or educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, community colleges, and universities. School includes school grounds but does not include facilities used primarily for another purpose and only incidentally as a school.
- c) A public or private park or recreational area that has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, athletic field, basketball or tennis courts, pedestrian or bicycle paths, wilderness areas, golf courses, or other similar recreational activities.
- d) A public or private library.
- e) An entertainment business that is oriented primarily toward children.
- f) Another adult business establishment.

**16-19.12.2.** The adult business establishment may not be located within three hundred (300) feet of the boundary of any residential district.

**16-19.12.3.** Measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where an adult business establishment is to be conducted, to the nearest

property line of the premises of a use boundary or a zoning district listed above. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

**Section 16-19.13. Additional Regulations for Adult Motels.** Evidence that a sleeping room in a hotel, motel, or similar commercial enterprise has been rented, vacated, and re-rented within a ten-hour period creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this ordinance. It is unlawful for a person, as the person in control of a sleeping room in a hotel, motel, bed and breakfast, or similar commercial enterprise that does not have an adult business establishment license, to rent or sub-rent a sleeping room to a person within ten hours from the time that the room was previously rented. For the purposes of this section, the terms “rent” and “sub-rent” mean the act of permitting a room to be occupied for any form of consideration.

**Section 16-19.14. Additional Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos or Live Entertainment.** A person who operates or causes to be operated an adult business establishment, other than an adult motel, which exhibits on the premises in a viewing room of less than one-hundred-fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

**16-19.14.1.** Upon application for an adult business establishment license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager’s stations, the location of all overhead lighting fixtures, and those areas of the premises in which patrons will not be permitted. A manager’s station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer’s or architect’s blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

**16-19.14.2.** The application shall be sworn to be true and correct by the applicant.

**16-19.14.3.** No alteration in the configuration or location of a manager’s station may be made without the prior approval of the Administrator.

**16-19.14.4.** It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager’s station at all times that any patron is present inside the premises.

**16-19.14.5.** The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have two or more manager's stations

designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations direct line of site.

**16-19.14.6.** It shall be the duty of the licensee to ensure that the view area required herein remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials, and, at all times, to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to this section.

**16-19.14.7.** No viewing room may be occupied by more than one person at any time.

**16-19.14.8.** The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.

- a) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- b) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
- c) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- d) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- e) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within forty-eight (48) inches of the floor.

**16-19.14.9.** It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

**16-19.14.10.** A person having a duty under this section commits a misdemeanor if he knowingly fails to fulfill that duty.

**Section 16-19.15. Additional Regulations for Escort Agencies.** An escort agency shall not employ any person under the age of twenty-one years. A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of twenty-one years.

**Section 16-19.16. Additional Regulations for Nude Model Studios.** A nude model studio shall not employ any person under the age of twenty-one (21) years.

**16-19.16.1.** A person under the age of twenty-one (21) years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to the prosecution of the person under twenty-one (21) years if that person was in a restroom not open to public view or visible to any other person.

**16-19.16.2.** A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises that can be viewed from the public right of way.

**16-19.16.3.** A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

**Section 16-19.17. Prohibited Acts and Conduct.** In addition to acts and conduct prohibited in previous sections of this Article the following are prohibited.

**16-19.17.1.** No person under the age of twenty-one (21) years shall be permitted on the premises of any adult establishment.

**16-19.17.2.** No person in an adult business establishment shall appear in a state of nudity or depict specified sexual activities.

**16-19.17.3.** No person in an adult business establishment shall appear in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two feet from the floor.

**16-19.17.4.** No person, while semi-nude in an adult business establishment shall solicit any pay or gratuity from any patron or customer. No patron or customer in an adult business establishment shall pay or give any gratuity to any employee of the adult business establishment while said employee is semi-nude.

**16-19.17.5.** No person in an adult business establishment shall perform any specified sexual activities, wear or use any device or covering that is exposed to view that simulates any specified anatomical area, use artificial devices or inanimate objects to perform or depict any of the specified sexual activities, or participate in any act of prostitution.

**16-19.17.6.** No person in an adult establishment shall knowingly touch, fondle, or caress any specified anatomical area of another person, or knowingly permit another person to touch, fondle, or caress any specified anatomical area, whether such specified anatomical areas are clothed, unclothed, covered, or exposed.

**16-19.17.7.** The sale or consumption of alcohol on the premises of an adult business establishment shall be prohibited.

**16-19.17.8.** No person shall permit any building, premises, structure, or other facility that contains any adult business establishment to contain any other kind of adult establishment.

**16-19.17.9.** No person shall permit any building, premises, structure, or other facility in which sexually oriented devices are sold, distributed, exhibited, or contained, to contain any other adult business establishment.

**Section 16-19.18. Exterior Portions of Adult Business Establishments.** It shall be unlawful for an owner or operator of an adult business establishment to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

**16-19.18.1.** Except as permitted by Section 16-19.19, it shall be unlawful for the owner or operator of an adult business establishment to allow the exterior portion of the establishment to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner.

**16-19.18.2.** One (1) parking space per one hundred (100) square feet of gross floor area shall be provided upon the premises immediately adjoining the structure housing the adult business establishment.

**16-19.18.3.** All parking areas and exterior entrances and exits shall be fully illuminated with night-lighting to deter criminal activities.

**16-19.18.4.** Perimeter buffer areas shall be established in order to create spatial separation and to lessen the possible adverse impacts upon adjacent land uses. A front yard setback of sixteen (16) feet and side and rear yard setbacks of twenty-four (24) feet shall be observed for buildings and parking. This area is to be used as a buffer as follows:

**16-19.18.4.1.** A Type "C" broken screen, as described in Section 16-22.6 of the Town Code, shall be installed along the front property line. The width of the screen shall be eight feet. All buildings and parking lots shall be set back eight feet from the edge of the buffer.

**16-19.18.4.2.** Where there is a parking area that is directly visible from the adjacent street right-of-way, a Type "B", semi-opaque screen, shall be installed to screen the parking lot from the adjacent street. The width of the landscape buffer shall be eight feet. The parking lot shall be set back eight feet from the edge of the buffer.

**16-19.18.4.3.** A Type "A", opaque screen, shall be installed along the side and rear lot lines. The width of the buffer shall be sixteen feet. All buildings and parking lots shall be set back eight feet from the edge of the buffer.

**16-19.18.4.4.** All trees, plants, and landscaping required herein shall be perpetually maintained. Any dead, unhealthy, or missing vegetation, or any vegetation disfigured by severe pruning, shall be replaced with new vegetation.

**Section 16-19.19. Signage.** It shall be unlawful for the owner or operator of any adult business establishment to erect, construct, or maintain any sign for the business except in conformance with the sign regulations of the Town (Article 17 of the Land Use Code). Any sign visible from the exterior of the building shall contain no photographs, silhouettes, drawings, or pictorial representations in any manner; and shall only contain the name of the enterprise.

**Section 16-19.20. Hours of Operation.** No adult business establishment, except for an adult motel, may remain open at any time between the hours of eleven o'clock (11:00) P.M. and eight o'clock (8:00) A.M. In addition, no adult business establishment, except for an adult motel, may remain open between the hours of eight o'clock (8:00) A.M. and two o'clock (2:00) P.M. on any Sunday.

**Section 16-19.21. Injunction.** A person who operates or causes to operate an adult business establishment without a valid license or in violation of this ordinance is subject to the penalties and remedies set forth in Article 7, except each violation of any requirement of this ordinance shall be subject to misdemeanor, pursuant to North Carolina General Statutes 14-4, which shall be punishable by a fine of \$500.00 or thirty-days imprisonment. Each day any such violation continues or occurs is a separate offense or violation.

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## **Article 20 - Parking**

**Section 16-20.1. Number of Parking Spaces Required.** All developments in all zoning districts shall provide a sufficient number of parking spaces to accommodate the number of vehicles that ordinarily are likely to be attracted to the development in question.

**16-20.1.1.** The presumptions established by this article are that:

- a) a development must comply with the parking standards set forth in 16-20.1.5 to satisfy the requirement stated in Section 16-20.1, and
- b) any development that does meet these standards is in compliance. However, the Table of Parking Requirements is only intended to establish a presumption and should be flexibly administered in accordance with Section 16-20.4.

**16-20.1.2.** Uses in the Table of Parking Requirements [subsection (F)], are indicated by a numerical reference keyed to the Table of Permissible Uses, Section 16-146. When determination of the number of parking spaces required by this table results in a requirement of a fractional space, any fraction of one-half or less may be disregarded, while a fraction in excess of one-half shall be counted as one parking space.

**16-20.1.3.** Whenever a building is constructed with the intention that it be used in whole or in part for use classification 2.210, 2.220, 3.120, or 3.220, the building shall be constructed on the lot in such a manner that sufficient usable space remain on the lot to add the additional parking spaces that would be required to convert the use of the building entirely to use classification 2.110, 2.210, 3.110, or 3.210. In addition, whenever a developer proposes to construct a building to be used for purposes that require a lesser number of parking spaces than other uses to which the building might well be put at some future date, the administrator shall inform the developer (and keep a record of such notification) that sufficient space should be left on the lot to add parking spaces at a later time if required.

**16-20.1.4.** The Board recognizes that the Table of Parking Requirements set forth herein cannot and does not cover every possible situation that may arise. Therefore, in cases not specifically covered, the permit-issuing authority is authorized to determine the parking requirements using this table as a guide.

**16-20.2. Table of General Parking Requirements:**

| <b>Use</b>     | <b>Type of Use</b>   | <b>Parking Requirement</b>   |
|----------------|--|--|
| 1.110          | <i>RESIDENTIAL<br/>Single-family home</i>  | 2 spaces plus one space per room rented out  |
| 1.120          | <i>MOBILE HOMES</i>  | (see Accessory Uses, Section 16-200)   |
| 1.130          | <i>SINGLE FAMILY RESIDENCE<br/>with accessory apartment</i>  | 3 spaces   |
| 1.200          | <i>TWO-FAMILY RESIDENCES</i>   | 2 spaces for each dwelling unit, except that one-bedroom units require only one space  |
| 1.310<br>1.330 | <i>MULTI-FAMILY RESIDENCES<br/>Other than mobile home<br/>parks;<br/>multi-family conversions</i>      | 1½ spaces for each one-bedroom unit, 2 spaces for each two-bedroom unit, 2½ spaces for each unit with three or more bedrooms, plus 1 additional space for every four units in the development. Multi-family units developed or sponsored by a public or non-profit agency for limited income families, or the elderly require only 1 space per unit. |
| 1.320          | <i>MOBILE-HOME PARKS</i>   | 2 spaces for each mobile home  |
| 1.400          | <i>HOMES EMPHASIZING<br/>SPECIAL SERVICES,<br/>TREATMENT OR<br/>SUPERVISION</i>                        | 3 spaces for every five beds except for uses exclusively serving children under 16, in which case 1 space for every 3 beds shall be required   |
| 1.500          | <i>MISCELLANEOUS LONG-<br/>TERM ROOMS FOR RENT</i>   | 1 space for each bedroom   |
| 1.620          | <i>SHORT-TERM RENTALS</i>  | 1 space for each bedroom to be rented  |
| 1.630          | <i>HOTEL AND MOTEL</i>   | 1 space for each room to be rented plus additional space (in accordance with other sections of this table) for restaurant or other facilities  |
| 1.700          | <i>HOME OCCUPATIONS</i>  | 4 spaces for offices of physicians or dentists; 2 spaces for attorneys; 1 space for all others   |
| 2.111<br>2.112 | <i>HIGH-VOLUME TRAFFIC<br/>GENERATION<br/>Miscellaneous and ABC Store</i>                              | 1 space per 200 square feet of gross floor area  |
| 2.113          | <i>CONVENIENCE STORES</i>  | 1 space per 200 square feet of gross floor area  |
| 2.120<br>2.130 | <i>LOW-VOLUME TRAFFIC<br/>GENERATION</i>   | 1 space per 400 square feet of gross floor area  |
| 3.110          | <i>OFFICE</i>  | 1 space per 200 square feet of gross floor area  |
| 3.120          | <i>OFFICE with little or no<br/>customer or client traffic</i>   | 1 space per 400 square feet of gross floor area  |
| 3.130          | <i>DENTIST OR DOCTOR<br/>OFFICES<br/>with less than 10,000<br/>square feet of gross floor<br/>area</i> | 1 space per 200 square feet of gross floor area  |

|                | <b>Type of Use</b>   | <b>Parking Requirement</b>  |
|----------------|--|---|
| 3.210          | <i>OFFICE<br/>Designed to attract and serve customers or clients on the premises</i>                             | 1 space per 200 square feet of gross floor area   |
| 3.220          | <i>OFFICE<br/>Designed to attract little or no customers or clients on the premises</i>                          | 1 space per 400 square feet of gross floor area   |
| 3.230          | <i>BANKS<br/>with drive-in windows</i>   | 1 space per 200 square feet of area within main building plus reservoir land capacity equal to five spaces per window (10 spaces if window serves two stations)   |
| 4.100<br>4.200 | <i>MANUFACTURING</i>   | 1 space for every two employees on the maximum shift except that, if permissible in the CB district, such uses may provide 1 space per 200 square feet of gross floor area  |
| 5.110          | <i>SCHOOLS</i>   | 1¾ spaces per classroom in elementary schools; 5 spaces per classroom in high schools.  |
| 5.120          | <i>SCHOOLS<br/>Trade or Vocational</i>   | 1 space per 100 square feet of gross floor area   |
| 5.130          | <i>COLLEGES, UNIVERSITIES,<br/>COMMUNITY COLLEGES</i>  | 1 space per 200 square feet of gross floor area   |
| 5.200          | <i>CHURCHES, SYNAGOGUES<br/>AND TEMPLES</i>  | 1 space for every four seats in the portion of the church building to be used for services <del>plus spaces for any residential use as determined in accordance with the parking requirements set forth above for residential uses, plus 1 space for every 200 square feet of gross floor area designed to be used neither for services nor residential purpose</del> |
| 5.310<br>5.320 | <i>LIBRARIES, MUSEUMS, ART<br/>GALLERIES</i>   | 1 space per 400 square feet of gross floor area   |
| 5.400          | <i>SOCIAL, FRATERNAL CLUBS<br/>AND LODGES</i>  | 1 space per 300 square feet of gross floor area   |
| 6.110          | <i>BOWLING ALLEYS, SKATING<br/>RINKS, INDOOR TENNIS,<br/>POOL HALLS, INDOOR<br/>EXERCISE FACILITIES</i>          | 1 space for every 3 persons that the facilities are designed to accommodate when fully utilized (if they can be measured in such a fashion – for example, tennis courts or bowling alleys) plus 1 space per 200 square feet of gross floor area used in a manner not susceptible to such calculation  |
| 6.120<br>6.130 | <i>MOVIE THEATERS</i>  | 1 space for every four seats  |
| 6.140          | <i>ANY ESTABLISHMENT<br/>WHERE THREE OR MORE<br/>VIDEO GAMES ARE<br/>AVAILABLE FOR THE USE OF<br/>THE PUBLIC</i> | 1 space for each video game   |
| 6.230          | <i>GOLF COURSES</i>  | Miniature golf course - 1 space per 300 square feet of golf course area plus 1 space per 200 square feet of building gross floor area; Driving range - 1 space per tee plus 1 space per 200 square feet in building gross floor area; Par Three Course - 2 spaces per golf hole plus 1 space per 200 square feet of building gross floor area.                        |

*Town Code of Blowing Rock, North Carolina*

| <b>Use</b>                       | <b>Type of Use</b>   | <b>Parking Requirement</b>  |
|----------------------------------|--|---|
| 6.240                            | <i>HORSEBACK RIDING,<br/>STABLES</i>   | 1 space per horse that could be kept at the stable when occupied to maximum capacity  |
| 6.250                            | <i>AUTOMOBILE AND<br/>MOTORCYCLE RACING<br/>TRACKS</i>   | 1 space for every three seats   |
| 6.260                            | <i>DRIVE-IN MOVIE THEATERS</i>   | 1 space per speaker outlet  |
| 7.100                            | <i>HOSPITALS, CLINICS<br/>in excess of 10,000 square<br/>feet of floor area</i>  | 2 spaces per bed  |
| 7.200                            | <i>NURSING CARE,<br/>INTERMEDIATE CARE,<br/>HANDICAPPED, INFIRM, OR<br/>CHILD CARE INSTITUTIONS</i>  | 3 spaces for every 5 beds   |
| 7.300<br>7.400                   | <i>INSTITUTIONS<br/>where mentally ill persons are<br/>confined and Penal and<br/>Correctional Facilities</i>  | 1 space for every two employees on maximum shift  |
| 8.100                            | <i>RESTAURANTS, BARS<br/>with no substantial carry-out,<br/>delivery or drive-in service or<br/>consumption outside fully<br/>enclosed structure</i>             | 1 space per 100 square feet of gross floor area   |
| 8.200<br>8.300                   | <i>With consumption outside fully<br/>enclosed structure not allowed<br/>after 10:00 p.m. local time.</i>  | Same as 8.100 plus 1 space for every six (6) outside seats. No spaces required if four seats or less. If more than 40 outside seats, rate is 1 space per 4 seats.   |
| 8.400                            | <i>With carry-out, delivery or<br/>drive-in service or consumption<br/>outside fully enclosed structure</i>  | Same as 8.200 plus reservoir lane capacity equal to five spaces per drive-in window   |
| 8.500<br>8.600                   | <i>Any of the above where the<br/>gross proceeds from the sale of<br/>food and non-alcoholic<br/>beverages are less than the sale<br/>of alcoholic beverages</i> | 1 space per 50 feet of gross floor area   |
| 9.100<br>9.200<br>9.300<br>9.400 | <i>MOTOR VEHICLE-RELATED<br/>SALES AND SERVICE<br/>OPERATIONS</i>  | 1 space per 200 square feet of gross floor area   |
| 9.500                            | <i>GAS SALES</i>   | 1 space per 200 square feet of gross floor area of building devoted primarily to gas sales operation, plus sufficient parking area to accommodate vehicles at pumps without interfering with other parking spaces   |
| 9.600                            | <i>CAR WASH</i>  | Conveyer type - 1 space for every three employees on the maximum shift plus reservoir capacity equal to five times the capacity of the washing operation. Self-service type - 2 spaces for drying and cleaning purposes per stall plus two reservoir spaces in front of each stall. |

| <b>Use</b>       | <b>Type of Use</b>   | <b>Parking Requirement</b>   |
|------------------|--|--|
| 10.210<br>10.220 | <i>STORAGE AND PARKING</i>   | 1 space for every two employees on the maximum shift but not less than 1 space per 5,000 square feet of area devoted to storage (whether inside or outside). |
| 11.000           | <i>SCRAP MATERIALS, SALVAGE YARDS, JUNK-YARDS, AUTOMOBILE GRAVEYARDS</i> | 1 space per 200 square feet of gross floor area  |
| 12.000           | <i>SERVICES AND ENTERPRISES RELATED TO ANIMALS</i>                       | 1 space per 200 square feet of gross floor area  |
| 13.000           | <i>EMERGENCY SERVICES</i>  | 1 space per 200 square feet of gross floor area  |
| 14.000           | <i>AGRICULTURAL, SILVICULTURAL, MINING, QUARRYING OPERATIONS</i>         | 1 space for every two employees on maximum shift   |
| 16.000           | <i>DRY CLEANER, LAUNDROMAT</i>   | 1 space per 200 square feet of gross floor area  |
| 19.000           | <i>OPEN AIR MARKETS</i>  | 1 space per 1,000 square feet of lot area used for storage, display, or sales  |
| 20.000           | <i>FUNERAL HOME</i>  | 1 space per 200 square feet of gross floor area  |
| 21.200           | <i>CREMATORIUM</i>   | 1 space per 200 square feet of gross floor area  |
| 22.000           | <i>NURSERY SCHOOLS, DAY CARE CENTERS</i>                                 | 1 space per employee plus 1 space per 200 square feet of gross floor area  |
| 24.000           | <i>BUS STATION</i>   | 1 space per 200 square feet of gross floor area  |
| 25.000           | <i>COMMERCIAL GREENHOUSE OPERATIONS</i>                                  | 1 space per 200 square feet of gross floor area  |

**Section 16-20.3. Parking Requirements for Central Business and Town Center Districts:** The following table is intended to provide the required parking spaces needed for new construction and additions in the Central Business and Town Center zoning districts. Most of the Use Codes have been combined to group similar use categories together with a similar parking requirement.

*Town Code of Blowing Rock, North Carolina*

| <b>Use Codes</b> | <b>Type of Use</b>   | <b>Proposed Parking Requirement</b>  |
|------------------|--|--|
| 1.110            | <i>RESIDENTIAL<br/>Single-family home</i>                          | 2 spaces plus one space per room rented out  |
| 1.130            | <i>RESIDENTIAL<br/>Single-family w/ accessory apt</i>              | 3 spaces   |
| 1.200            | <i>RESIDENTIAL<br/>Duplex</i>                                      | 2 spaces for each dwelling unit, except that one-bedroom units require only one space  |
| 1.310<br>1.330   | <i>RESIDENTIAL<br/>Multi-family</i>                                | 1½ spaces for each one-bedroom unit, 2 spaces for each two-bedroom unit, 2½ spaces for each unit with three or more bedrooms, plus 1 additional space for every four units in the development. Multi-family units developed or sponsored by a public or non-profit agency for limited income families, or the elderly require only 1 space per unit. |
| 1.400            | <i>INFIRM/HANDICAP HOME</i>  | 3 spaces for every five beds except for uses exclusively serving children under 16, in which case 1 space for every 3 beds shall be required   |
| 1.500            | <i>ROOMING HOUSE</i>   | 1 space for each bedroom   |
| 1.620            | <i>SHORT-TERM RENTALS</i>  | 1 space for each bedroom to be rented  |
| 1.630            | <i>HOTEL AND MOTEL</i>   | 1 space for each room to be rented plus additional space (in accordance with other sections of this table) for restaurant or other facilities  |
| 1.700            | <i>HOME OCCUPATION</i>   | 4 spaces for offices of physicians or dentists; 2 spaces for attorneys; 1 space for all others   |
| 2.111-<br>2.112  | <i>RETAIL<br/>MISCELLANEOUS ABC STORE</i>                          | 1 space per 400 square feet of gross floor area  |
| 2.113            | <i>CONVENIENCE STORE</i>   | 1space per 300 square feet of gross floor area   |
| 3.110-<br>3.220  | <i>OFFICE</i>  | 1 space per 400 square feet of gross floor area  |
| 3.230            | <i>BANK</i>  | 1 space per 400 square feet of area within main building plus reservoir land capacity equal to five spaces per window (10 spaces if window serves two stations)  |
| 4.100<br>4.200   | <i>MANUFACTURING<br/>Majority of business w/<br/>walk-in trade</i> | 1 space per 400 square feet of gross floor area  |
| 5.110            | <i>SCHOOL</i>  | 1¾ spaces per classroom in elementary schools; 5 spaces per classroom in high schools.   |
| 5.200            | <i>CHURCHES,<br/>SYNAGOGUES, AND<br/>TEMPLES</i>                   | 1 space for every four seats in the portion of the church building to be used for services <del>plus 1 space for every 400 square feet of gross floor area designed to be used neither for services nor residential purposes.</del>  |

*Town Code of Blowing Rock, North Carolina*

| Use Codes        | Type of Use   | Proposed Parking Requirement   |
|------------------|---|--|
| 5.310<br>5.320   | MUSEUM  | 1 space per 400 square feet of gross floor area (REVISED 6/09)   |
| 5.400            | SOCIAL HALLS  | 1 space per 400 square feet of gross floor area  |
| 6.120<br>6.130   | MOVIE THEATER   | 1 space for every four seats   |
| 6.210<br>6.220   | TENNIS COURTS/POOLS   | 1 space per 400 square feet of area within enclosed buildings, plus 1 space for every 4 persons that the outdoor facilities are designed to accommodate when used to the maximum capacity  |
| 8.100            | RESTAURANT<br><i>No drive thru allowed</i>                            | 1 space per (250) square feet of gross floor area  |
| 8.200<br>8.300   | RESTAURANT<br><i>No drive thru service but outside dining allowed</i> | Same as 8.100 plus 1 space for every six (6) outside seats. No spaces required if four seats or less. If more than 40 outside seats, rate is 1 space per 4 seats. (amended 3/9/10) (amended 7-12-22).  |
| 9.500            | GAS SALES   | 1 space per 400 square feet of gross floor area of building devoted primarily to gas sales operation, plus sufficient parking area to accommodate vehicles at pumps without interfering with other parking spaces  |
| 9.600            | CAR WASH  | Conveyor type – 1 space for every three employees on the maximum shift plus reservoir capacity equal to five times the capacity of the washing operation. Self-service type – 2 spaces for drying and cleaning purposes per stall plus two reservoir spaces in front of each stall |
| 10.210<br>10.220 | STORAGE   | 1 space for every two employees on the maximum shift but not less than 1 space per 5,000 square feet of area devoted to storage (whether inside or outside).   |
| 13.000           | POLICE/FIRE/RESCUE  | 1 space per 400 square feet of gross floor area  |
| 15.100<br>15.150 | POST OFFICE/<br>PUBLIC MAINT BLDG                                     | 1 space per 300 square feet of gross floor area  |
| 16.000           | DRY CLEANER   | 1 space per 400 square feet of gross floor area  |
| 19.000           | OPEN AIR MARKET   | 1 space per 1,000 square feet of lot area used for storage, display, or sales  |
| 20.000           | FUNERAL HOME  | 1 space per 400 square feet of gross floor area  |
| 22.000           | DAY CARE  | 1 space per employee plus 1 space per 400 square feet of gross floor area  |
| 24.000           | BUS STATION   | 1 space per 400 square feet of gross floor area  |
| 25.000           | GREENHOUSE  | 1 space per 400 square feet of gross floor area  |

**16-20.3.1.** Changes from one use category to another generally do not require additional parking with the exception of restaurants. If a proposed use change is to a restaurant use

with more than 12 indoor and/or outdoor seats, only half of the net parking spaces shall be required. For all other changes in use, no additional parking is required.

**16-20.3.2.** A one-time addition of bathrooms, storage or equipment areas less than 250 square feet is not required to provide additional parking.

**16-20.3.3.** Short-term rentals that legally exist on or before July 1, 2018 are grandfathered with respect to required parking. If any dwelling unit is expanded to add a bedroom that will be used for short-term rentals, the owner must provide an off-street parking space that meets the dimensional requirements of the Land Use Code.

**Section 16-20.4. Flexibility in Administration Required.** The Board recognizes that, due to the particularities of any given development, the inflexible application of the parking standards set forth in herein may result in a development either with inadequate parking spaces or parking space far in excess of its needs. The former situation may lead to traffic congestion or parking violations in adjacent streets as well as unauthorized parking in nearby private lots. The latter situation results in a waste of money as well as a waste of space that could more desirably be used for valuable development or environmentally useful open space. Therefore, as suggested in Section 16-20.1, the permit-issuing authority may permit deviations from the presumptive requirements of 16-20.2 and may require more parking or allow less parking whenever it finds that such deviations are more likely to satisfy the standard set forth in Section 16-20.1.

**16-20.4.1.** Without limiting the generality of the foregoing, the permit-issuing authority may allow deviations from the parking requirements set forth in 16-20.1.5 when it finds that:

- a) A residential development is irrevocably oriented toward the elderly; or
- b) A business is primarily oriented toward walk-in trade.

**16-20.4.2.** Whenever the permit-issuing authority allows or requires a deviation from the presumptive parking requirements set forth in 16-20.2 it shall enter on the face of the permit the parking requirement that it imposes and the reasons for allowing or requiring the deviation.

**16-20.4.3.** If the permit-issuing authority concludes, based upon information it receives in the consideration of a specific development proposal, that the presumption established by Subsection 16-16-20.2 for a particular use classification is erroneous, it shall initiate a request for an amendment to the *Table of Parking Requirements* in accordance with the procedures set forth in Article 20.

**Section 16-20.5. Payment of Fee in Lieu of Providing Required Parking Spaces.** With respect to properties within the TC, CB and O-I districts that are developed for commercial purposes, the permit-issuing authority may authorize the developer to forego the construction of parking spaces otherwise required on the developer's property pursuant to the provisions of this Article for commercial uses if:

- a) the permit-issuing authority finds that the parking needs of such development can be met by public parking facilities that are located or expected to be constructed within a reasonable time within reasonable proximity to the proposed development, and
- b) the developer pays to the Town for each such space that is not constructed a fee in lieu of providing that space in an amount determined as provided herein. This fee shall be paid

before an occupancy permit is issued to the development, unless the permit-issuing authority by condition establishes another time.

**16-20.5.1.** The amount of the fee authorized by this section shall be determined by estimating the cost of providing a paved parking space (including land and improvement costs) that meets the requirements of this Article. This determination shall be made annually and the fee shall be included in the Miscellaneous Fees and Charges Schedule adopted by the Board of Commissioners.

**16-20.5.2.** Any fees collected in accordance with this section shall be reserved and used exclusively to meet the purposes for which they have been obtained as specified above in Section 16-20.5.

**16-20.5.3.** 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)

**Section 16-20.6. Parking Space Dimensions.** Each parking space shall contain a rectangular area at least nineteen feet long and nine feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section.

Wherever parking areas consist of spaces set aside for parallel parking, the dimensions of such parking spaces shall be not less than twenty-two feet by nine feet.

**Section 16-20.7. Required Widths of Parking Area Aisles and Driveways.** Parking area aisle widths shall conform to the following table, which varies the width requirement according to the angle of parking.

| Aisle Width     | Parking Angle |         |         |         |         |
|-----------------|---------------|---------|---------|---------|---------|
|                 | 0°            | 30°     | 45°     | 60°     | 90°     |
| One-Way Traffic | 13 feet       | 11 feet | 13 feet | 18 feet | 24 feet |
| Two-Way Traffic | 19 feet       | 20 feet | 21 feet | 23 feet | 24 feet |

**16-20.7.1.** Driveways shall be not less than ten feet in width for one way traffic and eighteen feet in width for two-way traffic, except that ten feet wide driveways are permissible for two-way traffic when:

- a) the driveway is less than fifty feet in length;
- b) it provides access to not more than six spaces; and
- c) sufficient turning space is provided so that vehicles need not back into a public street.

**16-20.7.2.** Shared single-family driveways less than 75 feet in length, where permissible, may be 10 feet in width for that portion of the driveway which is shared. If the shared portion of the driveway is 75 feet or greater, the minimum width shall be 18 feet for the shared portion.

**16-20.7.3.** Any driveway required to be 18 feet in width shall not exceed a slope of 18%.

**Section 16-20.8. General Design Requirements.** Unless no other practicable alternative is available, vehicle accommodation areas shall be designed so that, without resorting to extraordinary movements, vehicles may exit such areas without backing onto a public street. This requirement does not apply to parking areas consisting of driveways that serve one or two dwelling units although; backing onto arterial streets is discouraged.

**16-20.8.1.** Vehicle accommodation areas of all developments shall be designed so that sanitation, emergency, and other public service vehicles can serve such developments without the necessity of backing unreasonable distances or making other dangerous or hazardous turning movements.

**16-20.8.2.** Every vehicle accommodation area shall be designed so that vehicles cannot extend beyond the perimeter of such area onto adjacent properties or public rights-of-way. Such areas shall also be designed so that vehicles do not extend over sidewalks or tend to bump against or damage any wall, vegetation, or other obstruction.

**16-20.8.3.** Circulation areas shall be designed so that vehicles can proceed safely without posing a danger to pedestrians or other vehicles and without interfering with parking areas.

**Section 16-20.9. Vehicle Accommodation Area Surfaces.** Vehicle accommodation areas that include lanes for drive-in windows or contain parking areas that are required to have more than ten parking spaces and that are used regularly at least five days per week shall be graded and surfaced with asphalt, concrete or other material that will provide equivalent protection against potholes, erosion, and dust. Driveways serving only 1 dwelling unit need not be paved. Specifications for surfaces meeting the standard set forth in this subsection are contained in Appendix D.

**16-20.9.1.** Vehicle accommodation areas that are not provided with the type of surface specified in subsection (A) shall be graded and surfaced with crushed stone, gravel, or other suitable material (as provided in the specifications set forth in Appendix D) to provide a surface that is stable and will help to reduce dust and erosion. The perimeter of such parking areas shall be defined by bricks, stones, railroad ties, or other similar devices. In addition, whenever such a vehicle accommodation area abuts a paved street, the driveway leading from such street to such area (or, if there is no driveway, the portion of the vehicle accommodation area that opens onto such streets), shall be paved as provided in subsection (A) for a distance of fifteen feet back from the edge of the paved street.

**16-20.9.2.** The requirement of this Section shall not apply to driveways or turnouts serving only single-family residences, duplexes, multi-family residences consisting of two dwelling units, or other uses that are required to have only one or two parking spaces.

**16-20.9.3.** Parking spaces in areas surfaced in accordance with Section 16-20.8 shall be appropriately demarcated with painted lines or other markings. Parking spaces in areas surfaced in accordance with subsection 16-20.8.1 shall be demarcated whenever practicable. Notwithstanding the provisions of Article 8, all paved parking areas shall comply with this subsection within six months after the effective date of this chapter.

**16-20.9.4.** Vehicle accommodation areas shall be properly maintained in all respects. In particular, and without limiting the foregoing, vehicle accommodation area surfaces shall be

kept in good condition (free from potholes, etc.) and parking space lines or markings shall be kept clearly visible and distinct.

**Section 16-20.10. Joint Use of Required Parking Spaces.** One parking area may contain required spaces for several different uses; however, except as otherwise provided in this section, the required space assigned to one use may not be credited to any other use.

**16-20.10.1.** To the extent that developments that wish to make joint use of the same parking spaces operate at different times, the same spaces may be credited to both uses. For example, if a parking lot is used in connection with an office building on Monday through Friday but is generally 90% vacant on weekends, another development that operates only on weekends could be credited with 90% of the spaces on that lot. Or, if a church parking lot is generally occupied only to 50% of capacity on days other than Sunday, another development could make use of 50% of the church lot's spaces on those other days.

**16-20.10.2.** If the joint use of the same parking spaces by two or more principal uses involves satellite parking spaces, then the provisions of Section 16-20.11 are also applicable.

**Section 16-20.11. Satellite Parking.** If the number of off-street parking spaces required by this chapter cannot reasonably be provided on the same lot where the principal use associated with these parking spaces is located, then spaces may be provided on adjacent or nearby lots in accordance with the provisions of this section. These off-site spaces are referred to in this section as "satellite" parking spaces.

**16-20.11.1.** All such satellite parking spaces (except spaces intended for employee use) must be located within 600 feet of a public entrance of a principal building housing the use associated with such parking, or within 600 feet of the lot on which the use associated with such parking is located if the use is not housed within any principal building. Satellite parking spaces intended for employee use may be located within any reasonable distance.

**16-20.11.2.** The developer wishing to take advantage of the provisions of this section must present satisfactory written evidence that he has the permission of the owner or other person in charge of the satellite parking spaces to use such spaces. Satellite spaces must not be shared by another business unless the joint use of spaces meets the provisions found in Section 16-20.8. The developer must also sign an acknowledgment that the continuing validity of the permit depends upon the continuing ability to provide the requisite number of parking spaces. If the satellite spaces become invalid, the developer must secure other on-site or satellite parking within 90 days and/or pay for each lost space into the Parking Fund at the prevailing rate per space.

**16-20.11.3.** Persons who obtain satellite parking spaces in accordance with this section shall be held accountable for ensuring that the satellite parking areas from which they obtain their spaces satisfy the design requirements of this article.

**Section 16-20.12. Special Provisions for Lots with Existing Buildings.** Notwithstanding any other provisions of this chapter, whenever there exists a lot with one or more structures on it constructed before the effective date of this chapter and a change in use that does not involve any enlargement of a structure is proposed for such lot and the parking requirements of Section 16-20.1 that would be applicable as a result of the proposed change cannot be satisfied on such

lot because there is not sufficient area available on the lot that can practicably be used for parking, then the developer need only comply with the requirements of Section 16-20.1 to the extent that, parking space is practicably available on the lot where the development is located and satellite parking space is reasonably available as provided in Section 16-20.1. However, if satellite parking subsequently becomes reasonably available, then it shall be a continuing condition of the permit authorizing development on such lot that the developer obtains satellite parking when it does become available.

**Section 16-20.13. Loading and Unloading Areas.** Whenever the normal operation of any development requires that goods, merchandise, or equipment be routinely delivered to or shipped from that development, a sufficient off-street loading and unloading area must be provided in accordance with this section to accommodate the delivery or shipment operations in a safe and convenient manner.

**16-20.13.1.** In the event congestion is likely to be created in the area, the loading and unloading area must be of sufficient size to accommodate the numbers and types of vehicles that are likely to use this area, given the nature of the development in question. The following table indicates the number and size of spaces that, presumptively, satisfy the standard set forth in this subsection. However, the permit-issuing authority may require more or less loading and unloading area if reasonably necessary to satisfy the foregoing standard.

| Gross Leasable Area of Building | Number of Spaces with Minimum Dimensions of 12 Feet By 55 Feet and Overhead Clearance of 14 Feet from Street Grade |
|---------------------------------|--|
| 1,000 - 19,999                  | 1  |
| 20,000 - 79,999                 | 2  |
| 80,000 - 127,999                | 3  |
| 128,000 - 191,000               | 4  |
| 192,000 - 255,999               | 5  |
| 256,000 - 319,999               | 6  |
| 320,000 - 391,999               | 7  |

Plus one (1) space for each additional 72,000 square feet or fraction thereof.

**16-20.13.2.** Loading and unloading areas shall be so located and designed that the vehicles intended to use them can:

- a) maneuver safely and conveniently to and from a public right-of-way; and
- b) complete the loading and unloading operations without obstructing or interfering with any public right-of-way or any parking space or parking lot aisle.

**16-20.13.3.** No area allocated to loading and unloading facilities may be used to satisfy the area requirements for off-street parking, nor shall any portion of any off-street parking area be used to satisfy the area requirements for loading and unloading facilities.

## **Article 21 - Commercial Design and Appearance Standards**

**Section 16-21.1. Purpose.** The general appearance, style, and design of commercial buildings, landscapes, streetscapes, and developments are of prime importance to the Town of Blowing Rock and its citizens. Blowing Rock is an historic mountain-resort community that has traditionally depended upon a tourism-based economy. Tourists, in large part, are attracted to the history, natural environment, scenic beauty, and aesthetic character of the community. The regulations and guidelines contained herein are intended to ensure that the high quality and standards for which Blowing Rock is known will be maintained and perpetuated. The purposes of this Article are as follows:

- a) To promote the public health, safety, and welfare through a comprehensive system of reasonable, effective, and consistent appearance standards and requirements.
- b) To create a balance between the need for new development and the desire to maintain a safe, healthful, and attractive resort community environment.
- c) To enhance the general welfare of the community by protecting property values and preserving the natural environment, the unique character, and the aesthetic integrity of the community. The preservation of Blowing Rock's appearance and natural beauty from excessive and unattractive development is a matter of critical importance to the Town because of its reliance on tourism.
- d) To provide proper standards to ensure a high level of quality in the appearance of Blowing Rock, without discouraging good design by setting rigid standards that stifle a developer's or property owner's individuality, creativity, or artistic expressions at a particular site.
- e) To aid in the preservation of natural resources by contributing to air purification, oxygen regeneration, groundwater recharge, energy conservation, and storm water runoff abatement, while reducing noise, glare, and heat.
- f) To ensure adequate light and air and to prevent the overcrowding of land.
- g) To preserve and improve property values and to protect public and private investment through the preservation of open space.
- h) To preserve and protect the quality and character of Blowing Rock, and to enhance the business economy attracted to the community by such factors.

**Section 16-21.2. Applicability.** The design criteria outlined in this Article shall apply to all new non-single-family development or redevelopment in Blowing Rock for which a zoning permit or a special use permit is required pursuant to Chapter 21 of the Town Code. Non-single-family development or redevelopment includes, townhouses, condominiums, multi-family apartments, commercial buildings, industrial buildings, churches, schools, hospital buildings, all other buildings not specifically designed and used for single-family or two-family purposes, and accessory buildings associated with all these types of non-single-family developments. For the purposes of this Article, the expansion, alteration, or reconstruction of an existing development shall not be considered "redevelopment" unless the value of the expansion, alteration, or reconstruction is greater than 50% of the value of the existing development prior to the expansion, alteration, or reconstruction. The value of the existing development shall be based on "tax value". In the absence of tax value, the Administrator shall estimate the value based upon

the best information reasonably available. The value of the expansion, alteration, or reconstruction shall be based on “construction cost”.

**Section 16-21.3. Criteria for Design.** The following criteria have been used in developing the standards and requirements contained in this article and shall serve as guidelines for development in Blowing Rock:

- a) **Livability.** Buildings and outdoor spaces should be designed to fit human scale, to harmonize with the design of streets, and to accommodate pedestrian traffic.
- b) **Visual Impact.** New public and private projects should be visually appealing, compatible with the mountain setting, and compatible with other development in the surrounding area.
- c) **Vegetation.** Landscape design should preserve existing trees and vegetation and incorporate new trees and shrubbery, as necessary to comply with this Article. Landscaping should be used to screen and soften the impact of development.
- d) **Mobility.** Land development should provide a network of roads, bicycle paths, and sidewalks that give consideration to the safety of motorists, cyclists, joggers, and walkers.
- e) **Views.** Streets, buildings, and parking lots should enhance the mountain environment by preserving and providing pleasant views and appropriate geographic orientations.

**Section 16-21.4. Exterior Walls and Facades of Commercial Buildings.** The exterior walls of commercial buildings shall be designed to reflect, enhance, and promote the desired image of a “mountain village”. Historic structures and other buildings in the Blowing Rock area that provide important examples of the “mountain village” image is contained in Appendix F. The examples that are contained in Appendix F shall be used as a guide for building design.

**16-21.4.1** Exterior building materials that are used on each building elevation that is adjacent to a street, whether public or private, shall be natural stone found in the area, or equivalent cultured stone products, natural wood siding, or other equivalent materials that are specifically approved by the Planning Board and/or the Town Council, as the case may be.

**16-21.4.2** Exterior building materials that are used on other elevations of the building may include, in addition to the materials specified in subparagraph 4.1 above, stucco, or other equivalent materials that are specifically approved by the Planning Board and/or the Town Council, as the case may be. Stucco may not be used to cover or replace old historic brick on existing buildings.

**16-21.4.3** All elevations of a building’s exterior design shall be coordinated with regard to color, materials, architectural form, and detailing. The design of a building must wrap around the sides to present a continuity of design on all exposed sides. No more than three primary building materials may be used on any building side. The use of different primary materials on the sides of a building from those that are used on the building facade shall be discouraged.

**16-21.4.4** Except to the extent prohibited by the State building codes, the wall area on the first floor of a building fronting a street shall have the following percentage of windows and doors:

- a) At least 30 percent windows and doors within the General Business District
- b) At least 50 percent windows and doors within the Town Center and Central Business Districts.

**16-21.4.5** The building shall be oriented so that a principal or primary facade faces each street on which the building fronts. The design of the principal or primary facade shall enhance the pedestrian environment by the use of such architectural elements as doorways, dormers, gables, porches, columns, and cornices. Upper story features such as balconies, mezzanines, and atriums, shall be encouraged provided that they are in proportion to the scale of the rest of the building.

**16-21.4.6** Special attention shall be given to the design of windows. Reflective glass and band windows are prohibited. Windows shall not be flush with the building facade or shall otherwise add variety to the streetscape.

**Section 16-21.5. Roof Lines.** Roofs shall be pitched with a minimum slope of 6:12 except a flat roof may be allowed on a building facing Main Street where the majority of neighboring buildings have flat roofs.

**16-21.5.1.** The following roofing materials are allowed on commercial buildings and require approval by the Zoning Administrator:

- Wood or asphalt shingles
- Slate (natural or synthetic)
- Metal standing seam
- Copper
- Metal roofing products that mimic traditional shingles

Roof materials shall be “nature-blending” in texture and appearance. Roof shape, color, and texture shall be coordinated with the treatment of the building’s perimeter walls. Roofing material colors shall be dark and consistent with the Town commercial color chart. (For example: brown, dark gray, dark green, slate, rustic red, tan, and light brown)

**16-21.5.2.** All rooftop mechanical and electrical equipment shall be screened from the view of streets and adjacent property.

**16-21.5.3.** Solar panels shall compliment the roof shape, materials, and colors and shall be designed to limit glare and reflectivity. Solar panels that are visible from streets or adjacent properties are subject to review and approval through a zoning permit or special use permit.

**Section 16-21.6. Color.** Colors of paint, stains, and other finishes or materials shall be “nature blending” with generally no more than three colors per building. The Administrator shall maintain a list of “nature blending colors”. Fluorescent colors are prohibited and stark white shall be discouraged.

**Section 16-21.7. Topography.** Proposed development and buildings to be situated on sloping sites shall be planned and designed to minimize the grading of the site, the removal of trees and natural vegetation, and the disruption of natural water courses. Proper erosion control shall be mandatory on all sites. Trees that are to remain on the site shall be protected to safeguard the sensitive root structure.

**16-21.7.1.** Grading shall blend gently with contours of adjacent properties, with smooth gradations around all cut-and-fill slopes, both horizontally and vertically. On sites containing slopes in excess of 12 percent, mass grading approaches are to be avoided. Custom architectural applications and specialized building techniques shall be primary factors in the designs for such sites.

**16-21.7.2.** Developments shall be designed so that they do not exceed the capacity of existing topography, natural drainage ways, soils, geology, and other natural site conditions. Areas whose physical site characteristics make them unsuitable for development shall be set aside as conservation areas or as open space.

**16-21.7.3.** When wooded sites are developed, it should only be done with careful consideration for the site’s natural characteristics. Wooded perimeters and desirable natural site features shall be protected to retain the visual character of the site. Isolated pockets of trees should be protected and used to soften the visual impact of the site.

**16-21.7.4.** Structures shall impede, as little as reasonably practical, upon scenic views of the natural environment from the street or highway corridor.

**Section 16-21.8. Lighting.** The Town of Blowing Rock has established coach lights with high pressure sodium (HPS) fixtures as the lighting standard for the Town. Commercial developments and residential subdivisions shall use this standard for exterior lighting fixtures that are used to illuminate streets, driveways, parking areas, and walkways. Approved lighting sources for other uses may include incandescent, shielded fluorescent, metal halide, or high-pressure sodium. Unapproved lighting sources include mercury vapor, unshielded fluorescent, neon, or tube gas lighting.

Site lighting shall be low-level from a concealed light source fixture and shall not spill over onto adjoining properties, road rights-of-way, or interfere with the vision of motorists. The resulting diffused or otherwise visible light on adjacent properties shall not be more than 1 foot-candle at the common lot line separating the properties. All exterior lighting shall be shielded from adjoining residential and institutional uses by means of thick evergreen vegetated buffers, berms, walls, or fences, and/or the use of directional lighting, special fixtures, timing devices, appropriate light intensities, luminaries, or mountings at appropriate heights.

**Section 16-21.9. General Landscaping.** Landscaping shall be required between a building and the adjacent sidewalk, parking lot, and driveway. The scale of the proposed landscaping shall be in proportion to the building.

**16-21.9.1.** All pruning shall be done in accordance with standard horticultural practice to preserve the natural character of the plant.

**16-21.9.2.** The Town finds that all existing vegetation that can be retained on the site in a healthy condition enhances native wildlife habitat and the visual character of the Town, and helps control surface water runoff, temperature, and pollution. Preservation of existing vegetation, especially specimen trees, is therefore encouraged. All existing vegetation that meets the landscape buffer requirements of this Article, or that is located in a preservation area designated on the approved site plan, shall be preserved on the site. Existing vegetation that is to remain on the site shall be clearly delineated and identified on all relevant plans.

**16-21.9.3.** The owner of the property shall have the following responsibilities with regard to general landscaping:

- a) protecting and maintaining the plants in the designated preservation area or buffer area in a healthy, growing condition;
- b) replacing them when necessary; and
- c) keeping the area free of refuse and debris.

The proposed methods of protection of existing vegetation during the construction process shall be reviewed and approved as part of the site plan approval process, shall be installed prior to the issuance of a land disturbance permit, and shall be maintained until all site work is complete.

**16-21.9.4.** All significant vegetation that is damaged or removed during construction shall be replaced with like species and sizes. If one-for-one replacement with trees of equal size is impossible, then the number and size of all of the replacement trees combined shall equal the total diameter at breast height (dbh) of the trees damaged and/or removed. Where it is impractical to provide one-for-one replacement or an equivalent number of trees equal to the sizes of the trees removed, the Administrator shall determine the minimum quantity of trees required. In no case shall replacement trees have a caliper of less than three (3) inches. Replacement trees shall be planted, or adequate surety given to the Town to guarantee that the trees will be planted, before an occupancy permit will be issued for the property or development.

**16-21.9.5.** As an incentive for the protection and preservation of existing vegetation: a five percent reduction in the number of required parking spaces will be allowed to the extent that the reduction of required pavement will preserve existing healthy trees.

**Section 16-21.10. Landscape Buffer.** Proposed development along a major highway corridor (US Route 321) in the General Business District shall provide a minimum landscape buffer adjacent to any road right-of-way. The purpose of the buffer is to soften the appearance of structures and parking lots from the corridor, to screen vehicular headlight glare, and to lessen the spillover of on-site lighting. The buffer shall have an average width of eight feet and a minimum width of five feet as measured from the right of way line. The prescribed width may be reduced by the Town Council at the time of site plan or preliminary plat approval. The factors to be considered in reducing the width of the landscape buffer are:

- a) Existing topography.
- b) The type, amount, and location of existing vegetation.

- c) The size and configuration of the parcel.
- d) The location and extent of underground and overhead utilities.
- e) Natural barriers to the installation or maintenance of the landscape barrier, such as waterways, rock formations, steep slopes, and soil conditions.

**16-21.10.1.** No development, clearing, grading, or construction activity is permitted within the buffer area except:

- 1) Driveway that is perpendicular (or within 20 degrees of perpendicular where topography limits or prohibits a perpendicular driveway) to the street right-of-way.
- 2) Installation of public utilities.
- 3) Pedestrian and bicycle paths.
- 4) Lighting fixtures.
- 5) Signs.
- 6) Sight distance triangles.

**16-21.10.2.** If the buffer area already has trees of protected size and species, their preservation is required. In order to maintain the screening effect, the lowest branches of existing vegetation may not be pruned off more than five feet from the ground, except where necessary to maintain traffic visibility.

**16-21.10.3.** Street trees, which will have when fully mature a trunk at least twelve inches in diameter, are required to be planted within the streetscape. Credit will be given for existing trees located within 15 feet of the street pavement or trees with canopies extending to the right-of-way line. Trees may be on public or private property and must be 3-inch caliper, or greater, when planted. On average, the property owner/developer shall install or maintain one street tree for each 30 linear feet of street frontage. When trees are planted by the property owner/developer pursuant to this section, the developer shall choose trees that meet the standards set forth in Appendix E.

**16-21.10.4.** Street trees may be installed in linear fashion, or in clusters or groupings with associated plantings, so as to enhance the visual appearance of the streetscape. Any planting area bounded by impervious surface shall be at least eight feet wide.

**16-21.10.5.** Where there is a parking area that is directly visible from the street right-of-way, the streetscaping shall provide a semi-opaque screen or barrier between the right-of-way and the parking area. The screen or barrier may consist of trees, plants, earthen berms, fences, walls, or any combination thereof.

**16-21.10.6.** The owners of property are responsible for the installation, preservation, and maintenance of all plantings and physical features. Any dead, unhealthy, or missing vegetation, or vegetation disfigured by severe pruning, shall be replaced with locally adapted vegetation. In the event that any vegetation is severely damaged due to an unusual weather occurrence or natural catastrophe, the owner shall have six months or the next growing season, whichever is sooner, to replace or replant.

**Section 16-21.11. Sidewalks.** It is the intent of this section that sidewalks be provided on both sides of all public streets. Sidewalks may be located on public property, or on private property with an easement agreement. All sidewalks shall conform to the applicable standards of texture,

materials, and color. All sidewalks shall be at least four feet wide. All sidewalks shall conform to the requirements of Section 16-14.17 of the Land Use Code and Appendix C.

In situations where sidewalks do not currently exist along the right-of-way on which the development is to be located, the property owner/developer may request that the Town Council grant a waiver from the requirement that sidewalks be installed. Such a waiver may be granted by the Town Council when the Council, in its sole discretion, determines that a waiver from the immediate construction of the sidewalks would be consistent with the public interest. However, the Council may only grant a waiver if the property owner/developer enters into an agreement wherein he/she agrees to construct the sidewalks at a later date at his/her sole expense when other sidewalks are being constructed or soon will be constructed along the street and when directed by the Town to do so. Such an agreement shall be binding upon the property owner/developer, and his/her agents, heirs, or assigns.

**Section 16-21.12. Utility Lines.** All new utility lines, with the exception of major transmission lines, shall be placed underground. Utility poles (other than wooden poles erected by a public utility company) and supports shall be painted neutral in color.

**Section 16-21.13. Parking Areas.** These requirements are intended to ensure attractive views of a property from streets and adjacent properties; to moderate temperatures of impervious areas; to abate glare; to filter automotive exhaust; and to encourage the preservation of existing trees and their root zones. Parking areas should not be focal points of development. Unless it would be impractical or unnecessary to do so, they shall be located away from streets, to the side or rear of principal structures. Parking areas adjacent to streets shall be screened by berms, trees, shrubs, walls, or fences.

**16-21.13.1.** Vehicle accommodation areas that are required to be paved by Section 21-20.9 of the Land Use Ordinance shall be shaded by deciduous trees in accordance with the provisions of 16-22.19 of the Land Use Code.

**16-21.13.2.** Storage and loading areas shall be screened with planted buffers at least six feet in height or rising two feet above the material or equipment being stored, whichever is greater.

**Section 16-21.14. Mechanical and Utility Areas.** Heating, ventilation, air conditioning, and other mechanical and utility equipment, including but not limited to vents, fans, compressors, pumps, and heating and cooling units, which are located on, besides, or adjacent to any building or development, shall be screened from the view of streets and adjacent property. The screen shall exceed the height of the equipment, shall not interfere with the operation of the equipment, and shall use building materials and design that are compatible with those used for the exterior of the principal building. Suitable plant materials shall be used at the base and corners of any screening wall to soften the wall's appearance.

**Section 16-21.15. Trash Containment Areas.** All trash containment devices, including compactors and dumpsters, shall be located, designed, and screened so as not to be visible from the view of adjacent streets, parking lots, and other properties. The type of screening used shall be determined based on the proposed location of the trash containment area, existing site conditions, and the type and amount of existing and proposed vegetation on the site.

**16-21.15.1.** All trash containment areas and devices shall meet the following standards:

- a) All trash containment areas shall be enclosed to contain windblown litter.
- b) The enclosure shall exceed the height of the compactor or dumpster and shall effectively screen the equipment from the view of adjacent streets and property.
- c) The enclosure shall be made of a material that is opaque and compatible with the design and materials of the principal building.
- d) All compactors and dumpsters shall be placed on a concrete pad that is large enough to provide adequate support, allows for positive drainage, and conforms to health department regulations.
- e) The enclosure shall contain gates to allow for access and to provide security and screening.
- f) The owner or occupant of the premises shall maintain the solid waste containment area in good repair at all times.

**Section 16-21.16. Fences and Walls.** Walls of natural rock material are a revered part of the community's history. Use of stone walls constructed of local stone materials is strongly encouraged for defining property lines, particularly those along street frontages.

**16-21.16.1.** Retaining walls shall be covered with natural stone found in the area or other suitable material as may be specifically approved by the Town Council. Retaining walls over six feet in height that are located adjacent to property lines or street rights-of-way and visible from the adjacent property or street right-of-way shall be screened with a semi-opaque screen or barrier between the wall and the adjacent property or street right-of-way. The screen or barrier may consist of trees, plants, earthen berms, or any combination thereof.

**16-21.16.2.** Long, solid fences or walls shall contain offsets or other architectural features to break up the appearance of a continuous mass.

**16-21.16.3.** Stepped fencing relates well to undulating topography and gentle slopes. Steeply sloping land suggests the use of retaining walls in conjunction with fence design.

**Section 16-21.17. Vacated Buildings.** Whenever the use of a building or premises by a business or other establishment is discontinued, the building shall be properly secured and all signage pertaining to that business or establishment shall be removed in conformance with the requirements of Section 16-17.4.5.

The boarding up of vacated buildings shall be prohibited. The building or property owner may erect or install interior window coverings to block the view into the vacated building, but such interior window coverings shall be of a color or design that is compatible with the remainder of the building.

**Section 16-21.18. Variance from Standards.** The Town Council may vary these standards if it is determined that the proposed project is not detrimental to the public welfare or the intent of this regulations.

Where necessary to accommodate individuality and creativity in site design, or where conformance with the strict requirements of this Article is not feasible on a particular property, the Town Council may modify the requirements of this Article in reviewing and approving the site

plan, provided that the physical improvements, features, or landscaping that the applicant proposes to install on the site are equivalent in effectiveness to the requirements of this Article.

**Section 16-21.19. Additional Standards for Large-Scale Retail Buildings.** This section places additional restrictions and design parameters on large-scale retail developments with the Town of Blowing Rock’s planning jurisdiction, specifically the uses classified in the Table of Permissible Uses under the principal use category **2.000 Sales and Rental of Goods, Merchandise and Equipment**. Given the unique character and scale of development in Blowing Rock, these standards are an effort to reduce the mass of large-scale retail establishments, create additional open spaces, reduce traffic congestion and accidents, increase pedestrian amenities, reduce vehicular dependence, and provide for maintenance responsibilities for developers. When a new retail building is proposed in the General Business District, Town Center District, or Central Business District, the additional standards and requirements in the following tables shall be met:

**GB, General Business District**

| Category | Proposed Building Square Feet | Additional Requirements   |
|----------|-------------------------------|---|
| A        | Up to 12,000 SF               | None other than existing Land Use Code standards  |
| B        | 12,001 to 25,000 SF           | Maximum F.A.R. (Floor Area Ratio), Landscape space requirements, Traffic analysis, pedestrian amenities   |
| C        | Greater than 25,000 SF        | Maximum F.A.R. (Floor Area Ratio), Landscape space requirements, Traffic analysis, pedestrian amenities, additional landscape buffers, additional parking lot landscaping, maintenance bond |

**TC, Town Center and CB, Central Business District**

| Category | Proposed Building Square Feet | Additional Requirements  |
|----------|-------------------------------|--|
| A        | Up to 12,000 SF               | None other than existing Land Use Code standards   |
| B        | Greater than 12,000 SF        | Traffic analysis, pedestrian amenities, additional landscape buffers, additional parking lot landscaping, maintenance bond |

**16-21.20 Definitions and Explanations of Additional Requirements:**

**16-21.20.1** Traffic analysis – An independent study provided by the applicant that identifies any improvements necessary to accommodate existing or projected traffic volumes arising from a new commercial development. The study should account for traffic movement on all streets adjacent to the development and provide existing traffic volumes and turning movement counts, projected traffic volumes, and the identification of required improvements such as traffic calming devices. The Town’s engineer or designee will review the traffic analysis and determine compliance with Town Codes and the Comprehensive Plan. The applicant will be responsible for paying the review fees incurred by the Town for review of a traffic analysis.

**16-21.20.2** Pedestrian amenities – Sidewalks, trails, paths, greenways, etc. that link the development with surrounding neighborhoods and commercial developments. These links will provide connectivity and opportunities for citizens to walk or bike to commercial destinations without the reliance of vehicles.

**16-21.20.3** Additional landscape buffers – All side and rear property lines shall have landscape buffers not less than 20 feet in width. These buffers shall have opaque screening as defined by Article 22 and Appendix E.

**16-21.20.4** Additional paved vehicle accommodation area landscaping – Twenty-five percent (25%) of the paved vehicle accommodation area shall be shaded by new or existing trees. The shading is calculated by Section E-3 of the Land Use Code Appendix.

**16-21.20.5** Floor Area – The sum in square feet of the enclosed areas on all floors of a building measured from the outside faces of the exterior walls. It includes halls, lobbies, stairways, elevator shafts, enclosed porches and balconies, and any below grade floor areas used for habitation and storage. It does not include open terraces, patios, atriums, balconies, carports, garages or any floor space in an accessory building. Large-scale commercial buildings in category B or C in the General Business District shall not exceed the maximum Floor Area Ratio (F.A.R.) of (0.40) or 40% of the entire lot.

**16-21.20.6** Landscape Space: The sum in square feet of all areas on a development tract devoted to landscaping, buffers, lawns, grassed areas, naturally-vegetated areas, stream buffers, and open storm water detention/retention areas with planted vegetation. It shall not include vast areas of mulch void of trees, shrubs, or plantings.

- 1) Permissible forms of mulch shall be wood chips, bark, pine straw, or river rock. These materials shall be earth-toned or nature blending.
- 2) Developments with large-scale commercial buildings in category B or C in the General Business District shall not provide less than a minimum landscape space area of (0.20) or 20% of the entire lot.

**16-21.20.7** Maintenance bond: A maintenance bond will provide financial surety to the Town, prior to the issuance of a permit, that an owner will be responsible for the maintenance and repair of a building, parking lot, landscaping, and other site items if the tenant vacates a building.

**Section 16-21.21 Display of News racks and Publications in Town Center, Central Business and Office Institutional Zoning Districts.** All news racks and publications units located on public or private property within the Town Center (TC), Central Business (CB) and Office-Institutional (O-I) zoning districts must be located within a modular news rack provided by the Town. All other news racks and publications units in the TC, CB and O-I zoning districts that display and dispense written or printed material must be located on the inside of buildings.

**Section 16-21.22 Outdoor Display of Merchandise**

**16-21.22.1.** In the CB and TC zoning districts, merchandise may be displayed on the public sidewalk, provided the following standards are met:

- 1) Merchandise may be placed no farther than three (3) feet from the face of the building, as long as a minimum of five (5) feet of public sidewalk remains unobstructed;
- 2) Merchandise display is limited to a height of five (5) feet above the public sidewalk, and confined to the width of the building;
- 3) Merchandise display may not block any code-required exits or curb access.
- 4) Merchandise can only be displayed during business hours.

**Section 16-21.23 Outdoor Dining in TC and CB Zoning Districts**

**16-21.23.1.** Outdoor dining in TC and CB Zoning Districts is regulated by the following standards:

- 1) All outdoor dining floor/decking surfaces must meet ADA accessibility requirements in NC Building Code.
- 2) Ingress and Egress pathways must meet the NC Building Code.
- 3) Any impervious surface increases 500 square feet or less are exempt from storm water detention requirements. Impervious surface increases greater than 500 square feet shall off set the increase or provide storm water detention. Gravel and concrete are both considered impervious.
- 4) The total number of permissible outdoor dining seats, combined with indoor seating, is limited by the restroom fixture counts as determined by the NC Building Code.
- 5) Barriers must be provided to protect the dining area from vehicular traffic when adjacent to a public street/sidewalk. Barriers would include solid bollards not more than 4 feet apart with fencing or solid members between the bollards. Unstable protection fencing or posts/barriers/columns will not be acceptable. Outdoor dining areas shall be compatible and complimentary to the principal building in design and use of materials.
- 6) Outdoor dining areas shall not be allowed in designated parking areas.
- 7) Required landscaping and buffers shall not be removed to create outdoor dining areas unless the landscape area is located in an approved nearby area.
- 8) Outdoor white string lighting is allowed to outline dining areas and provide overhead lighting. Consistent with Section 16-21.8, the resulting diffused or visible lighting on adjacent properties shall not exceed 1 foot-candle at the common property line

separating the properties. Outdoor dining area lighting shall not spill over onto road rights of way or interfere with the vision of motorists.

**16-21.23.2.** The available number of outdoor dining seats for downtown zoning areas is determined by several factors within this Section 16-21.23. Outdoor dining seats may be established by an approved zoning permit, approved Special Use Permit (Conditional Use prior to 2021), or the list of restaurant outdoor seating accounted in 2006 (updated) by Planning Staff.

**16-21.23.3.** Restaurant owners may exercise the option to increase outdoor seating from the prior approved number of seats, through a permitting process that will apply the standards herein. If the seating can be increased, and all standards are met, that number of seats shall be listed on the revised permit (Zoning or Special Use). Restaurant owners will not be required to remove seats from the established baseline of the 2006 listing, zoning/special (conditional) use permit. The baseline of permitted seating is not determined by the increase of seating due to the suspension of regulations due to the Covid-19 pandemic.

**16-21.23.4.** Tents used to cover and/or enclose restaurant outdoor dining are permitted for special occasions only and not to exceed one week in duration. Not more than four (4) special occasions are permitted per calendar year. If longer terms are needed for covering of dining areas, restaurant owners are encouraged to construct permanent coverings/roofs that meet the applicable building setbacks, architectural standards in this Article, and the NC Building Code.

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## Article 22 - Screening and Trees

**Section 16-22.1. Board Findings Concerning the Need for Screening Requirements.** The Board finds that:

- a) Screening between two lots lessens the transmission from one lot to another of noise, dust, and glare.
- b) Screening can lessen the visual effects that may otherwise occur within an urbanized area. Even minimal screening can provide an impression of separation of spaces, and more extensive screening can shield entirely one use from the visual assault of an adjacent use.
- c) Screening can establish a greater sense of privacy from visual or physical intrusion, the degree of privacy varying with the intensity of the screening.
- d) The provisions of this part are necessary to safeguard the public health, safety and welfare.

**Section 16-22.2. General Screening Standard.** Every development shall provide sufficient screening so that:

- a) Neighboring properties are shielded from any adverse external effects of that development;
- b) The development is shielded from the negative impacts of adjacent uses such as streets or railroads.

Screening shall be located and maintained so as not to interfere with vehicular and pedestrian traffic.

**Section 16-22.3. Compliance with Screening Standard.** To determine the required screening, the following steps shall be taken:

Identify the classification of the proposed land use and all adjacent uses listed in Section 16-22.4

- a) Screening Land Use Classification.
- b) Use the Table of Screening Requirements in Section 16-22.5 to determine the appropriate letter designation for each abutting area. Match the letter designation obtained from the Table of Screening Requirements in Section 16-22.5 with the Description of Screening in Section 16-22.4 to determine the required screening.
- c) The screening requirements established in this article apply to all land uses except where specific requirements are established for uses elsewhere in this ordinance.

**Section 16-22.4. Screening Land Use Classification.** Listed below are the classifications of land uses that will determine the required screening established in Section 16-22.5, Table of Screening Requirements. The land uses are keyed to the Table of Permissible Uses contained in Section 16-10.1.

**16-22.4.1. Classification I:** single-family residences (1.100); single-family development with an accessory apartment (1.130) golf courses and parks (privately and publicly owned) not constructed pursuant to a permit authorizing the construction of another use such as a residential development or a school (6.210, 6.220).

**16-22.4.2. Classification II:** two-family residences (1.200); multi-family residences (1.300); homes emphasizing special services, treatment or supervision (1.400); miscellaneous, rooms for rent situations (1.500, excluding 1.530); educational, cultural, religious, philanthropic, social, fraternal uses (5.000); recreation, amusement, entertainment activity conducted

primarily outside enclosed buildings or structures (6.200); agricultural operations, and farming excluding livestock (14.110); cemetery (21.000); commercial greenhouse operations (25.000).

**16-22.4.3. Classification III:** hotels, motels and other similar businesses or institutions providing overnight accommodations (1.630); sales and rental of goods, merchandise and equipment (2.000); office, clerical, research and services not primarily related to goods or merchandise (3.000); manufacturing, processing, creating, repairing, renovating, painting, cleaning, assembling of goods, merchandise and equipment (4.000); recreation, amusement, or entertainment activity conducted entirely within building or substantial structure (6.100); institutional residence or care or confinement facilities (7.000); restaurants, bars, night clubs (8.000); motor vehicle related sales and service operations (9.000); storage and parking (10.000); services and enterprises related to animals (12.000); emergency service operations (13.000); agricultural operations, and farming including livestock (14.120); post office (15.100); airports (15.200); dry cleaner and Laundromat (16.000); utility facilities (22.000); open air markets and horticultural sales (19.000); funeral home (20.000); nursery schools, day care centers (22.000); bus station (24.000).

**16-22.4.4. Classification IV:** scrap materials salvage yards, junkyards, automobile graveyards (11.000); mining or quarrying operations, including on-site sales of products (14.300); telecommunication towers and related structures (18.000).

**Section 16-22.5. Table of Screening Requirements.** The Table of Screening Requirements shall be used to determine screening requirements between adjacent land uses.

| Proposed Land Use Class | Adjacent Existing Land Use |    |     |    | Adjacent Zoning Type (For Vacant Property) |                 | Adjacent Public or Private Street |
|-------------------------|----------------------------|----|-----|----|--|-----------------|-----------------------------------|
|                         | I                          | II | III | IV | Residential                                | Non-Residential |                                   |
| II                      | A                          | B  | B   | C  | A  | C               | B                                 |
| III                     | A                          | B  | C   | C  | A  | B               | B                                 |
| IV                      | A                          | A  | A   | A  | A  | A               | A                                 |

**Section 16-22.6. Descriptions of Screens.** The following three basic types of screens are hereby established and are used as the basis for the Table of Screening Requirements set forth in Section

**16-22.6.1. Opaque Screen, Type “A”.** A screen that is opaque from the ground to a height of at least six feet, with intermittent visual obstructions from the opaque portion to a height of at least twenty feet. An opaque screen is intended to exclude completely all visual contact between uses and to create a strong impression of spatial separation. The opaque screen may be composed of a wall, fence, landscaped earth berm, planted vegetation, or existing vegetation. Compliance of planted vegetative screens or natural vegetation will be judged on

the basis of the average mature height and density of foliage of the subject species, or field observation of existing vegetation. The opaque portion of the screen must be opaque in all seasons of the year. At maturity, the portion of intermittent visual obstructions should not contain any completely unobstructed openings more than ten feet wide. The portion of intermittent visual obstructions may contain deciduous plants. Suggested planting patterns that will achieve this standard are included in Appendix E.

**16-22.6.2. Semi-Opaque Screen, Type “B”.** A screen that is opaque from the ground to a height of three feet, with intermittent visual obstruction from above the opaque portion to a height of at least twenty feet. The semi-opaque screen is intended to partially block visual contact between uses and to create a strong impression of the separation of spaces. The semi-opaque screen may be composed of a wall, fence, landscaped earth berm, planted vegetation, or existing vegetation. Compliance of planted vegetative screens or natural vegetation will be judged on the basis of the average mature height and density of foliage of the subject species, or field observation of existing vegetation. At maturity, the portion of intermittent visual obstructions should not contain any completely unobstructed openings more than ten feet wide. The zone of intermittent visual obstruction may contain deciduous plants. Suggested planting patterns that will achieve this standard are shown in Appendix E.

**16-22.6.3. Broken Screen, Type “C”.** A screen composed of intermittent visual obstructions from the ground to a height of at least twenty feet. The broken screen is intended to create the impression of a separation of spaces without necessarily eliminating visual contact between the spaces. It may be composed of a wall, fence, landscaped earth berm, planted vegetation or existing vegetation. Compliance of planted vegetative screens or natural vegetation will be judged on the basis of the average mature height and density of foliage of the subject species, or field observation of existing vegetation. The screen may contain deciduous plants. Suggested planting patterns that will achieve this standard are included in Appendix E.

**16-22.7. Width of Landscaping Screen.** Unless otherwise provided in this Land Use Code, the minimum width of a landscaping screen shall conform to the following table. However, the permit-issuing authority may permit deviations from the presumptive requirements of the following table and may require either more intensive or less intensive screening whenever it finds such deviations are more likely to satisfy the standard set forth in Section 16-22.3 without imposing unnecessary costs on the developer.

| <b>Type of Screen</b>        | <b>Width - Front Lot Line</b> | <b>Width - Side Lot Line</b> | <b>Width - Rear Lot Line</b> |
|------------------------------|-------------------------------|------------------------------|------------------------------|
| Opaque Screen, Type “A”      | 8 feet                        | 16 feet                      | 16 feet                      |
| Semi-Opaque Screen, Type “B” | 8 feet                        | 16 feet                      | 16 feet                      |
| Broken Screen, Type “C”      | 8 feet                        | 8 feet                       | 8 feet                       |

**16-22.6.8. Town Center and Central Business District Requirements.** Street yard buffer area screening/landscaping requirements shall be established using Section 16-12.6.b, 16-12.6.2, 16-12.6.2.1. The minimum width for landscape screening alongside and rear lot lines of properties less than one (1) acre (in TC or CB District) may be reduced to half of the required width for other zoning districts, except in cases where other screening widths are authorized by a specific special use permit. (Ex: The table below requires a 16-foot wide screen along a side lot line, but in the TC or CB District a buffer 8 feet wide may be approved.)

| <i>Type of Screen</i>        | <i>Width - Front Lot Line</i> | <i>Width - Side Lot Line</i> | <i>Width - Rear Lot Line</i> |
|------------------------------|-------------------------------|------------------------------|------------------------------|
| Opaque Screen, Type "A"      | 8 feet                        | 16 feet (8 ft – CB/TC)       | 16 feet (8 ft – CB/TC)       |
| Semi-Opaque Screen, Type "B" | 8 feet                        | 8 feet (4 ft – CB/TC)        | 16 feet (8 ft – CB/TC)       |
| Broken Screen, Type "C"      | 8 feet                        | 8 feet (4 ft – CB/TC)        | 8 feet (4 ft – CB/TC)        |

**Section 16-22.9. Flexibility in Administration Required.** The Board recognizes that because of the wide variety of types of developments and the relationships between them, it is neither possible nor prudent to establish inflexible screening requirements. Therefore, as provided in Section 16-22.3, the permit-issuing authority may permit deviations from the presumptive requirements of Section 16-22.5 and may require either more intensive or less intensive screening whenever it finds such deviations are more likely to satisfy the standard set forth in Section 16-22.3 without imposing unnecessary costs on the developer.

**16-22.9.1.** Without limiting the generality of this section, the permit-issuing authority may modify the presumptive requirements for:

- a) Commercial developments located adjacent to residential uses in business zoning districts;
- b) Commercial uses located adjacent to other commercial uses within the same zoning district; and
- c) Uses located within planned unit developments.

**16-22.9.2.** Whenever the permit-issuing authority allows or requires a deviation from the presumptive requirements set forth in Section 16-22.5, it shall enter on the face of the permit the screening requirement that it imposes to meet the standard set forth in Section 16-22.3 and the reasons for allowing or requiring the deviation.

**16-22.9.3.** If the permit-issuing authority concludes, based upon information receives in consideration of a specific development proposal, that a presumption established by Section 16-22.5 is erroneous, it shall initiate a request for an amendment to the Table of Screening Requirements in accordance with the procedures set forth in Article 23.

**Section 16-22.10. Combination Uses.** In determining the screening requirements that apply between a combination use and another use, the permit-issuing authority shall proceed as if the principal uses that comprise the combination use were not combined and reach its determination accordingly, relying on the table set forth in Section 16-22.5, interpreted in the light of Section 16-22.6.

When two or more principal uses are combined to create a combination use, screening shall not be required between the composite principal uses unless they are clearly separated physically, and screening is determined to be necessary to satisfy the standard set forth in Section 16-22.3. (For example, screening may be required in a residential combination use consisting of single-family and multi-family components.)

**Section 16-22.11. Maintenance of Screening and Landscape Plantings.** Screening required by this Article, including the shading provisions listed in Section 16-22.13, shall be maintained in accordance with these requirements.

**16-22.11.1.** Landscaping shall not be installed or retained in any location that constitutes a hazard or infringement to the public health, safety, or welfare. Landscaping shall not obstruct the view of motorists using any street, private driveway, parking aisles, or the approach to any street intersection so as to constitute a traffic hazard or a condition dangerous to the public safety.

**16-22.11.2.** Whenever any planting areas required by this Article are adjacent to parking or vehicular circulation areas, the planting areas shall be protected from vehicular intrusion or damage by either concrete wheel stops, concrete/asphalt curbs or retaining walls.

**16-22.11.3.** All landscaping planting areas shall be stabilized from soil erosion immediately upon planting and shall be maintained for the duration of the use.

**16-22.11.4.** The owner is responsible for maintaining all required plant material in good health. Any dead, unhealthy, or missing plants must be replaced with vegetation that conforms to the initial planting standards of this Article within one planting season.

**Section 16-22.12. Silvicultural Standards.** All silviculture operations shall be carried out in accordance with state approved best management practices for silviculture. All silviculture projects shall maintain buffers in a natural state where indicated below:

- a) An undisturbed buffer of a minimum 30 feet in width around the entire perimeter of any wetland, water body, or water course located on or adjacent to the project site;
- b) A buffer extending a minimum of 25 feet in width around the entire perimeter of the silviculture project site, except at necessary points of ingress and egress; and
- c) A buffer a minimum of 50 feet in width along perimeter areas of the site which adjoin any public road right-of-way, except at necessary points of ingress and egress, and except that marketable timber may be removed from the innermost 25-foot strip of buffer provided selective logging techniques are used which will minimize understory destruction and provided no ground disturbance occurs.

**Section 16-22.13. Board Findings and Declaration of Policy on Shade Trees.** The Board finds that:

- a) Trees are proven producers of oxygen, a necessary element for human survival;
- b) Trees appreciably reduce the ever-increasing, environmentally dangerous carbon dioxide content of the air and play a vital role in purifying the air we breathe;
- c) Trees precipitate dust and other particulate air-borne pollutants from the air and allow air-borne pollutants to settle to the ground;
- d) Trees transpire considerable amounts of water each day and thereby purify the air;
- e) Trees have an important role in neutralizing wastewater passing through the ground from the surface to ground water tables and lower aquifers;
- f) Trees, through their root systems, stabilize the ground water tables and play an important and effective part in soil conservation, erosion control and flood control;
- g) Trees are an invaluable physical, aesthetic and psychological counterpoint to the urban setting, making urban life more comfortable by providing shade and cooling the air and land, reducing noise levels and glare and breaking the monotony of human developments on the land, particularly parking areas; and
- h) For the reasons indicated in Section 16-22.13(g) trees have an important impact on the desirability of land and, consequently, on property values.

Based upon the findings set forth herein the Board declares that it is not only desirable but essential to the health, safety, and welfare of all persons living or working within the Town's planning jurisdiction, present and future, to protect certain existing trees and, under the circumstances set forth in this article, to require the planting of new trees in certain types of developments.

**Section 16-22.14. Required Trees Along Dedicated Streets.** Along both sides of all newly created streets with respect to which an offer of dedication is required to be made by this chapter, the developer shall either plant or retain sufficient trees so that, between the paved portion of the street and a line running parallel to and fifty feet from the centerline of the street, there is, for every thirty feet of street frontage, at least an average of one deciduous tree that has or will have when fully mature a trunk at least twelve inches in diameter. The trunk of all trees to be planted by the developer shall be located at least 8 feet from the edge of the street pavement or six feet from the edge of the existing or proposed sidewalk. When trees are planted by the developer pursuant to this section, the developer shall choose trees that meet the standards set forth in Appendix E.

**Section 16-22.15. Retention and Protection of Large Trees.** Every (non-single-family) development in the Town Center and Central Business District shall retain all existing healthy eight (8) inch diameter (dbh) trees with drip lines outside the building and paving area footprint to the greatest extent possible. A developer may be required to modify his/her design in order to preserve healthy trees provided the redesign can be accommodated without reducing the intensity of development on the site.

**16-22.15.1.** All other commercial (non-single-family) development and single-family subdivisions requiring a special use permit shall retain all existing healthy significant trees eighteen (18) inches in diameter (dbh) or more unless the retention of such trees would unreasonably burden the development.

**16-22.15.2.** Every commercial (non-single-family) development and single-family subdivisions requiring a special use permit shall retain all existing healthy historic trees thirty (30) inches in diameter (dbh) or more with drip lines outside the building footprint. A developer will be required to modify his/her design in order to preserve healthy historic thirty (30) inch diameter trees, provided the redesign can be accommodated without reducing the intensity of development on the site. The Town Council, through the special use process, shall approve the removal of healthy historic trees on commercial property.

**16-22.15.3** No excavation or other subsurface disturbance may be undertaken within the drip line of any tree eighteen inches in diameter (dbh) or more, and no impervious surface (including, but not limited to, paving or buildings) may be located within 12.5 feet (measured from the center of the trunk) of any tree eighteen inches in diameter or more unless compliance with this subsection would unreasonably burden the development. For purposes of this subsection, a drip line is defined as a perimeter formed by the points farthest away from the trunk of a tree where precipitation falling from the branches of that tree lands on the ground.

**16-22.15.4** The retention or protection of trees eighteen (18) inches in diameter (dbh) or more as provided in herein unreasonably burdens a development if, to accomplish such retention or protection, the desired location of improvements on a lot or the proposed activities on a lot would have to be substantially altered and such alteration would work an unreasonable hardship upon the developer.

**16-22.15.5.** Trees that are dead, dying, or which pose a risk to life, property, or utilities may be removed. In these scenarios, a clearing permit is required for tree removal, but no fee will be charged. If the Planning Director disagrees with the Applicant that a tree is diseased or damaged, the Applicant shall provide documentation from a Certified Arborist that the specified tree poses a hazard.

Utility companies and their agents responsible for right-of-way clearing operations shall consult with the Planning Director or the Director's designee prior to tree pruning and/or removal.

**16-22.15.6.** If space that would otherwise be devoted to parking cannot be so used because of the requirements of this section and, as a result, the parking requirements set forth in Article 20 cannot be satisfied, the number of required spaces may be reduced by the number of spaces "lost", up to a maximum of fifteen percent of the required spaces.

**Section 16-22.16. Tree Credits.** Preserving trees can improve the aesthetic quality of the site and improve property values, provide environmental benefits, mitigate the impacts of development on the community, and help minimize opposition to the proposed development. It is recommended that groups of trees, as well as individual trees, be preserved. Existing healthy preserved trees and shrubs may be credited towards required buffer trees, street trees, and parking lot trees according to the provisions set forth herein.

**16-22.16.1.** Preserved trees may be credited at the rate of:

- 1) 2" – 6" caliper tree = 1 tree

- 2) 7" – 12" caliper tree = 2 trees
- 3) 13" – 18" caliper tree = 3 trees
- 4) 19" – 24" caliper tree = 4 trees
- 5) 25" + caliper tree = 5 trees

Note: All replacement trees are required to be a minimum 3-inch caliper with an average height of 12 - 15 feet.

**16-22.16.2.** In order to receive credit, preserved vegetation must be certified in good health and condition by a Certified Horticulturist, Arborist or Forester, Landscape Architect, North Carolina Landscape Contractor, or N. C. Certified Plant Professional. Trees designated to be preserved must be indicated on the Landscape and Grading Plans. Protective barriers must be shown on the Landscape and Grading Plans. If a preserved tree dies after completion of the project, it must be replaced with the total number of trees which were credited to the existing tree.

**16-22.16.3.** Applicants for all commercial (non-single-family) projects, and major subdivisions shall submit a current tree survey of the site proposed for development. The tree survey shall be drawn to engineer's scale and accurately designate the species, location and diameter of all trees eight (8) inches in diameter (dbh) or greater on the site, and all trees proposed for credit as provided in Section 16-22.15.1.

**16-22.16.4.** If a property owner contends a tree is or is not healthy and the Administrator is in disagreement with such claim, the property owner shall submit an evaluation of the tree's health, performed by an individual with verifiable expertise in such matters as provided in Section 16-22.15.2. If such evaluation determines the tree is not in good health or will not remain healthy under new conditions proposed for the site, the Administrator shall permit the removal of the tree(s).

**16-22.16.5.** The permit-issuing authority may approve reductions in the requirements for the number of parking spaces or loading area requirements in order to facilitate preservation of historic and significant trees.

**16-22.16.6.** The standard measurement for existing trees to be preserved shall be the diameter-at-breast-height (dbh) measured in inches at a height of 4.5 feet above ground. If a tree splits into multiple trunks below 4.5 feet, then each trunk is measured as a separate tree. A tree which splits into multiple trunks above 4.5 feet is measured as a single tree at 4.5 feet.

**Section 16-22.17. Protection of Existing Vegetation.** No grading or other land disturbing activity can occur on a site with existing trees which are designated to be preserved in order to meet the landscaping requirements until protective barriers are installed by the developer and approved by the Administrator. Protection measures to be used during grading and construction shall be specified on all landscaping, grading and erosion control plans.

**16-22.17.1.** For purposes of this article, the Tree Protection Perimeter is defined as that area within a circle drawn with the tree's trunk as the center and a radius defined by the tree's drip line (which is the perimeter formed by the points farthest away from the trunk of a tree where precipitation falling from the branches of that tree lands on the ground). No storage

of materials, dumping of waste materials, fill, or parking of equipment shall be allowed within this protected area, either during construction or after completion. No structures shall be permitted within the protected area unless approved by the Town Council, Director of Planning and Inspections or the Director's designee.

**16-22.17.2.** A minimum 4-foot-high protection fence constructed of a high visible material resistant to degradation by sun, wind and moisture for the duration of the construction shall be used. A tree protection fence detail should be drawn on one plan submittal sheet and referenced on the landscaping, grading and erosion control sheets.

**16-22.17.3.** If a violation of Section 16-22.15 occurs and as a result protected trees or shrubs die after a certificate of occupancy is issued for the development, then the owner of the property and their agents, heirs, or assigns shall be required to replace the tree using the credits in Section 16-22.16. Such replacement must take place within thirty (30) days after death and this condition shall be a continuing condition of the validity of the permit.

**Section 16-22.18. Tree Topping.** Tree topping, rounding, or "hat-racking" is defined as the severe cutting back of limbs to stubs larger than two inches in diameter within the tree's crown to such a degree as to remove the normal canopy and to disfigure the tree. Tree topping shall be prohibited on all public property, designated public rights-of-way, and all trees falling under the jurisdiction of the ordinance, including protected and retained trees and newly planted trees. Proper pruning techniques recommended by the USDA Forest Service Urban and Community Forestry Program shall be used as a guide for pruning.

Tree topping shall be strongly discouraged on single-family property. It is encouraged that tree trimming be performed by selective cutting and proper pruning techniques recommended by the USDA Forest Service Urban and Community Forestry Program.

**Section 16-22.19. Shade Trees in Parking Areas.** Vehicle accommodation areas that are required to be paved by Section 16-20.7 must be shaded by deciduous trees (either retained or planted by the developer) that have or will have when fully mature a trunk at least twelve inches in diameter. When trees are planted by the developer to satisfy the requirements of this subsection, the developer shall choose trees that meet the standards set forth in Appendix E.

**16-22.19.1.** Each tree of the type described in Section 16-22.19 shall be presumed to shade a circular area having a radius of fifteen feet with the trunk of the tree as the center, and there must be sufficient trees so that, using this standard, twenty percent (20%) of the vehicle accommodation area will be shaded. Large-scale retail developments defined by Section 16-22.21.21 shall be required to shade twenty-five percent (25%) of vehicle accommodation areas.

**16-22.19.2.** No paving may be placed within 6 feet (measured from the center of the trunk) of any tree retained to comply with Section 16-22.19 and new trees planted to comply with Section 16-22.19 shall be located so that they are surrounded by at least 250 square feet of unpaved area.

**16-22.19.3.** Vehicle accommodation areas shall be laid out and detailed to prevent vehicles from striking trees by the installation of either concrete wheel stops, concrete/asphalt curbs or retaining walls. Vehicles will be presumed to have body overhang of three feet six inches.

**16-22.19.4.** Parking areas shall be separated from the exterior wall of a structure by a landscaped planting area of at least four (4) feet in width. Planting areas shall be located behind sidewalks and may be omitted at pedestrian entrance ways.

**16-22.19.5.** No parking space shall be located further than 60 feet from a shade tree.

**Section 16-22.20. Mulching and Maintenance on Commercial Property.** Standard mulching practices shall allow for the use of pine straw, pine bark nuggets, hardwood mulch, or pine mulch. All mulch shall be natural in color and may not be colored or dyed. Dyed or colored mulch, brick chips, rubber or synthetic mulch, and/or non-earth tone gravel shall not be allowed within landscaped areas.

**16-22.20.1.** Landscape areas shall be kept free of weeds and trash.

**16-22.20.2.** Mulched areas must be surrounded by sod, grassed areas, natural areas, curbing, sidewalks, walls, landscape timbers, rocks, or other bordering devices.

**Section 16-22.21. Penalties.** If trees are removed unlawfully (without authorization) or severely damaged, and a violation of Section 16-22.15 occurs and/or protected trees or shrubs die during the development process or after certificate of occupancy is issued for a development, then the owner of the property and their agents, heirs, or assigns shall be required to replace the trees using the credits in Section 16-22.16 and shall be subject to a civil penalty according to the following schedule:

- a) Removing a protected tree from 8" dbh to less than 18" dbh = \$500.00.
- b) Removing a protected tree ranging from 18" dbh to less than 30" dbh = \$1,000.00
- c) Removing a protected tree with 30" dbh or greater = \$2000.00.

**Section 16-22.22 Public Trees.** This Article shall be known as the Public Tree Ordinance of the Town of Blowing Rock, North Carolina. The provisions of this Article are adopted under authority granted by N.C.G.S. 160A-174. This Article is applicable within the Town's Planning Jurisdiction and specifically applies to public areas, Town right-of-ways, and Town property.

**16-22.22.01** The first purpose of this Article is to regulate the planting, maintenance and removal of trees and shrubs in public areas. In order to protect and conserve trees in public areas, this Article provides for the pruning, treatment and removal of trees, root systems and shrubs as the Tree Board deems necessary, acting under the authority of the Board of Commissioners. This Article is also intended to provide for the trimming and removal of trees in public areas when they obscure street lights, interfere with surface and subsurface utility lines, or constitute a hazard to pedestrian or vehicular traffic, or otherwise endanger the public health, safety or welfare as the Tree Board or the Planning Director determines, acting under the authority of the Board of Commissioners.

**16-22.22.02** The second purpose of this Article is to express the Town's intent to use trees to create a more natural and congenial living environment. The Tree Board shall be

responsible for promoting the best use, selection and care of trees in public areas and for the administration of the long-range Parks and Recreation Master Plan.

**16-22.22.03 Authorization Required.**

- (a) No person, except as authorized herein, shall plant, maintain, remove, or otherwise disturb, any tree or shrub in any public area without first receiving written approval from the Tree Board. Exempted from this Article are public utilities providing electrical service within the Town that prune or cut trees or vegetation around electrical lines and fixtures to protect said lines and fixtures from damage from trees and vegetation. Routine maintenance of public areas by the Town or its subcontractors shall be coordinated with the Tree Board.
- (b) In cases of public vehicular safety, the Police Chief, Public Works Director, or the Planning Director may immediately remove limbs obstructing traffic signs or impairing vehicular visibility.
- (c) In case of emergencies, including windstorms, ice storms and other disasters, permits may be waived by the Town Manager, Tree Board, Director of Public Works or the Planning Director during the immediate emergency period so as not to hamper emergency work.
- (d) The Tree Board may initiate tree and shrub planting or removal in public areas with the prior approval of the Board of Commissioners. Town residents may initiate tree and shrub planting or removal in public areas with the written approval of the Tree Board. Nearby property owners will be notified of planned tree and shrub planting or removal.
- (e) All plantings now and hereafter installed in public areas shall become the property of the Town and shall be under the control of the Town and subject to all regulations of the Town thereafter.

**16-22.22.04 Enforcement.** The Tree Board acting under the authority of the Board of Commissioners shall have the general powers and duties to:

- (a) Discuss, coordinate and plan with the Landscaping Department to include all plantings, removal, maintenance and protection of all trees and shrubs in all public areas.
- (b) Guard all vegetation in any public area to prevent the spread of plant disease or pests and to eliminate conditions deemed by the Tree Board to be dangerous to the safety of persons or property.
- (c) Administer the provisions of this Article.
- (d) Accept requests for planting, removal, or maintenance of plantings in any public area, and accept or deny the request as required by the provisions of this Article.
- (e) Remove any vegetation placed without approval in a public area.

**16-22.22.05 Abuse or Mutilation of Public Trees or Shrubs.** Unless specifically authorized by the Tree Board, Landscaping Department, Board of Commissioners or exempted herein, no person shall intentionally damage, cut, carve, transplant, or remove any tree or shrub in a public area; attach nails, signs, advertising posters, or other contrivance to any tree or shrub in a public area; allow any gas, liquid or solid substance which is harmful to such trees or shrubs to come in contact with them; or set fire or permit any fire to burn when such fire, or the heat thereof, will injure any portion of any tree or shrub in a public area. Exempted from this Article are public utilities providing electrical service within the Town who prune or cut trees or vegetation around electrical lines and fixtures to protect said lines and fixtures from damage from trees and vegetation.

**16-22.22.06 Protection of Trees.**

- (a) All trees in any public area near any excavation, construction, or street work, shall be protected in a manner specified by the Tree Board, Landscaping Department, Board of Commissioners or the Planning Director. Private projects shall bear the cost and responsibility of the protection requirements.
- (b) All trees in public areas shall, to the degree practicable, be pruned or trimmed only in accordance with standards established by the American National Standards Institute, Publication A-300, Tree Pruning Standards, 1995 edition or later.

**16-22.22.07 Location of New Trees.**

- (a) No street tree shall be planted nearer than ten feet from any fireplug or streetlight, nor within six feet of curb cuts or driveways.
- (b) No street trees, other than those species listed as small trees on the desirable trees list, may be planted under or within ten lateral feet of any overhead utility line, or over or within five lateral feet of any underground water line, sewer line, transmission line, or other underground utility or within six feet of the edge of the paved street.

**16-22.22.08 Removal and Maintenance.**

- (a) The Town will maintain trees and shrubs and remove dead or diseased trees and shrubs in public areas as necessary.
- (b) No person shall remove trees or shrubs from public areas for any purpose without first procuring written authorization from the Tree Board, Landscaping Department, Board of Commissioners or the Planning Director. Said person who obtains such authorization shall bear the cost of removal. Exempted from this Article are public utilities providing electrical service within the Town that prune or cut trees or vegetation around electrical lines and fixtures to protect said lines and fixtures from damage from trees and vegetation.

## **Article 23 - Amendments**

**Section 16-23.1. Amendments in General.** Amendments to the text of this chapter or to the zoning map may be made in accordance with the provisions of this Article. The term “major map amendment” shall refer to an amendment that addresses the zoning district classification of five or more tracts of land in separate ownership or any parcel of land (regardless of the number of lots or owners) in excess of fifty acres. All other amendments to the zoning map shall be referred to as “minor map amendments”.

**Section 16-23.2. Initiation of Amendments.** Whenever a request to amend this chapter is initiated by the board of commissioners, the planning board, the board of adjustment, the Town administration, or the Town attorney, in consultation with the planning department, shall draft an appropriate ordinance and present that ordinance to the board of commissioners so that a date for a public hearing may be set.

**16-23.2.1.** Any other person may also petition the Board to amend this chapter, except that third-party downzoning shall be prohibited. The petition shall be filed with the administrator and shall include the following information:

- a) The name, address, and phone number of the applicant;
- b) A description of the land affected by the amendment if a change in zoning district classification is proposed;
- c) Stamped envelopes containing the names and addresses of all those to whom notice of the public hearing must be sent as provided in Section 16-23.4;
- d) A description of the proposed map change or a summary of the specific objective of any proposed change in the text of this chapter;
- e) A concise statement of the reasons why the petitioner believes the proposed amendment would be in the public interest.

**16-23.2.2.** Upon receipt of a petition as provided in Section 16-23.2.1, the administrator shall either:

- a) Treat the proposed amendment as one initiated by the Town administration and proceed in accordance with Section 16-23.2 if it believes that the proposed amendment has significant merit and would benefit the general public interest; or
- b) Forward the petition to the Board with or without written comment for a determination of whether an ordinance should be drafted and a public hearing set in accordance with subsection 16-23.2.3.

**16-23.2.3.** Upon receipt of a proposed ordinance as provided in Section 16-23.1 the Board may establish a date for a public hearing on it. Upon receipt of a petition for an ordinance amendment as provided in subsection 16-23.2.1, the Board may summarily deny the petition or set a date for a public hearing on the requested amendment and order the attorney, in consultation with the administrator, to draft an appropriate ordinance.

**Section 16-23.3. Planning Board Consideration of Proposed Amendments.** If the Board sets a date for a public hearing on a proposed amendment, it shall also refer the proposed amendment to the planning board for its consideration.

**16-23.3.1.** The planning board shall endeavor to review the proposed amendment in such a timely fashion that any recommendations it may have can be presented to the board at the public hearing on the amendment. However, if the planning board is not prepared to make recommendations at the public hearing, it may request the Board to delay final action on the amendment until such time as the planning board can present its recommendations.

**16-23.3.2.** The Board need not await the recommendations of the Planning Board before taking action on a proposed amendment, nor is the Board bound by any recommendations of the planning board that are before it at the time it takes action on a proposed amendment.

**Section 16-23.4. Hearing Required, Notice.** No ordinance that amends any of the provisions of this chapter may be adopted until a public hearing has been held on such ordinance.

**16-23.4.1.** The Administrator shall publish such notice once a week for two successive weeks in a newspaper having general circulation in the Blowing Rock area. The notice shall be published for the first time not less than ten days nor more than twenty-five days before the date fixed for the hearing. This period is to be computed in accordance with G.S.1-594, which provides that the date of publication is not counted but the date of the hearing is.

**16-23.4.2.** With respect to map amendments, the Administrator shall mail written notice of the public hearing to the record owners for tax purposes of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties any portion of which is within 150 feet of the property rezoned by the amendment.

**16-23.4.3.** The planning staff shall also post notices of the public hearing in the vicinity of the property rezoned by the proposed amendment and take any other action deemed by the planning staff to be useful or appropriate to give notice of the public hearing on any proposed amendment.

**16-23.4.4.** The notice required or authorized by this section shall include the following:

- a) State the date, time, and place of the public hearing;
- b) Summarize the nature and character of the proposed change;
- c) If the proposed amendment involves a change in zoning district classification, reasonably identify the property whose classification would be affected by the amendment;
- d) State that the full text of the amendment can be obtained from the Town clerk; and
- e) State that substantial changes in the proposed amendment may be made following the public hearing.

**16-23.4.5.** The planning staff shall make every reasonable effort to comply with the notice provisions set forth in this section. However, it is the Board's intention that no failure to comply with any of the notice provisions (except those set forth in subsection 16-23.4.1) shall render any amendment invalid.

**Section 16-23.5. Board Action on Amendments.** At the conclusion of the public hearing on a proposed amendment, the Board may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.

The Board is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.

Voting on amendments to this chapter shall proceed in the same manner as other ordinances, subject to Section 16-23.7.

**Section 16-23.6. Ultimate Issue Before Board on Amendments.** In deciding whether to adopt a proposed amendment to this chapter, the central issue before the Board is whether the proposed amendment is consistent with the Comprehensive Land Use Plan or any other plan adopted according to NCGS 160D-501. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the mayor and excluded.

**16-23.6.1.** When considering proposed map amendments, the Board shall not consider any representations made by the petitioner that, if the change is granted, the rezoned property will be used for only one of the possible ranges of uses permitted in the requested classification. Rather, the Board shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.

**16-23.6.2.** The Board shall not regard as controlling any advantages or disadvantages to the individual requesting the change but shall consider the impact of the proposed change on the public at large.

**16-23.6.3.** The Board shall adopt a statement of reasonableness for zoning map amendments, considering the factors referenced in 160D-605(b).

**16-23.6.4.** If the Board approves a map amendment that is not consistent with the Land Use Plan, the change must be noted on the map (NCGS 160D-605(a)).