

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
February 16, 2017**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 5:30 p.m. Thursday, Feb. 16, 2017, at the Council Chambers located at 1500 Blowing Rock Road. Mayor Rennie Brantz presided. Council members present included Mayor Pro Tem Lynne Mason, Loretta Clawson, Charlotte Mizelle, Jennifer Teague and Jeannine Underdown Collins. Town Attorney Allison Meade was in attendance. Staff present were Town Manager John Ward, Assistant Town Manager Jim Byrne, Town Clerk Christine Pope, Public Works Director Rick Miller, Planning Director Jane Shook, Human Resources Director Peri Moretz, Fire Chief Jimmy Isaacs, Police Chief Dana Crawford, Finance Director Amy Davis and Cultural Resources Director Pilar Fotta.

ANNOUNCEMENTS

Mayor Brantz recognized Judy Ferguson for her time working for the Town of Boone and Ronnie Holste for his time volunteering on the ABC Board. He also presented a proclamation designating February 2017 as Black History Month in the town of Boone.

TENTATIVE AGENDA ADOPTION

Town Manager John Ward noted there were no changes to the agenda.

PUBLIC COMMENT

Brooke Huffman, of Watauga County Schools, appeared before Council to announce the State of the Child Forum to be held May 5 and invited Council to attend.

Tucker Deal, on behalf of the King and College Planned Development request, provided some additional information for those who were unable to attend the last meeting in which the application was discussed, and highlighted specific aspects of the proposed development.

REQUESTED APPEARANCES

UNC SCHOOL OF GOVERNMENT DEVELOPMENT FINANCE INITIATIVE PRESENTATION

Christy Raulli, of the UNC School of Government's Development Finance Initiative, appeared before Council and provided a PowerPoint presentation and discussed a proposal to help the Town of Boone determine the types of projects and developments they would like to see in town, adding that once determined, they could then reach out to private investors. Town Manager John Ward noted that this would target new opportunities based on what Council would like to see come into Boone. He added that they would focus on the Howard Street corridor and follow up with a detailed proposal of services including associated costs.

MELISSA SELBY - COMMUNITY CARE CLINIC PRESENTATION

Melissa Selby, executive director of the Community Care Clinic, appeared before Council to discuss the additional work they have been able to achieve with the funds provided by Council, and thanked Council for their continued support.

DANNY WILCOX - PRESENTATION OF RAIL JAM EVENT PROCEEDS

Danny Wilcox of Appalachian Mountain Brewery appeared before Council to present the proceeds from the Daniel Boone Rail Jam event totaling \$6,500, which will go back to the Town of Boone.

CONSENT AGENDA ADOPTION

Upon a motion by Council Member Clawson, seconded by Council Member Mizelle, Council moved to adopt the Consent Agenda with one revision to amend Item 6.E. - Scheduling of Special Meetings to hold all three Wellness District meetings at the Watauga Medical Center in the auditorium.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Loretta Clawson, Council Member
SECONDER: Charlotte Mizelle, Council Member
AYES: Mason, Clawson, Mizelle, Teague, Collins

TOWN COUNCIL - REGULAR MEETING - JAN 19, 2017 5:30 PM

APPROVAL OF VOLUNTEER APPRECIATION AND RECOGNITION RESOLUTION - RONALD HOLSTE

RESOLUTION OF VOLUNTEER APPRECIATION AND RECOGNITION

WHEREAS, Ronald Holste has served this community well in numerous capacities during his time volunteering on the Town of Boone's Alcoholic Beverage Control (ABC) Board; and,

WHEREAS, Ronald Holste's service to the Town of Boone shows exemplary dedication to the best interest and betterment of the community; and,

WHEREAS, through the performance of his duties and responsibilities as a member of the ABC Board, he has made excellent and constructive contributions to our Town; and,

WHEREAS, he has earned the admiration and high regard of those with whom he has come into contact and the affection of his fellow public servants.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Boone, North Carolina does hereby express our sincere appreciation and thanks, as well as that of our citizens, to Ronald Holste with sincere best wishes for continued success and many happy years ahead.

Adopted by unanimous vote of the Town Council on the 16th day of February, 2017.

ATTEST:

Mayor Rennie Brantz

Town Clerk Christine Pope

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 314)

APPROVAL OF BUDGET AMENDMENTS

Description:	Account Number:	To:	From:
Maintenance & Repair – Building (Fire Station #1)	010-406-000-525101	\$50,444	
Maintenance & Repair – Building (Fire Station #2)	010-415-000-525101	\$34,983	
Maintenance & Repair – Building (Fire Station #3)	010-420-000-525101	\$24,419	
FEMA – Grant Funds	010-000-000-418030		(\$76,885)
Grant Match Funding	010-400-000-539907		(\$32,961)
Miscellaneous Supplies	010-500-300-519900	\$1,825	
Expendable Medical Supplies	010-500-300-514110	\$575	
Contributions/Donations	010-000-000-482200		(\$2,400)

Maintenance – Street Lights	010-600-401-525210	\$954	
Maintenance – Street Lights	010-600-401-525210	\$373	
Miscellaneous Revenue	010-000-000-489900		(\$954)
Miscellaneous Revenue	010-000-000-489900		(\$373)
Contracted Services – Public Utilities	030-700-801-577000	\$100,000	
Transfer from Raw Water Capital Reserve Fund	030-000-000-498033		(\$100,000)
Capital Outlay – Street Signals/Signs	010-600-401-574003	\$13,413	
Miscellaneous Revenue	010-000-000-489900		(\$12,527)
Miscellaneous Revenue	010-000-000-489900		(\$886)
Maintenance – Street Lights	010-600-401-525210	\$1,326	
Miscellaneous Revenue	010-000-000-489900		(\$954)
Miscellaneous Revenue	010-000-000-489900		(\$372)

APPROVAL OF RESOLUTION OF APPRECIATION - JUDY FERGUSON

RESOLUTION OF APPRECIATION

WHEREAS, Judy D. Ferguson will retire from the Town of Boone, North Carolina as of February 28, 2017; and,

WHEREAS, she has served the citizens of Boone as a Senior Customer Service Representative in the Utility Billing Department with great distinction since 2007 and as an Administration Support Specialist with the Town of Boone's Planning and Inspection Department from August of 1998 until June of 2000, and;

WHEREAS, she has always shown great dedication and genuine concern for the citizens of the town, town employees and Town Council; and,

WHEREAS, she has been an honest, loyal and committed public servant to the town.

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Boone, North Carolina, hereby expresses their sincere appreciation and gratitude to Judy D. Ferguson for her contributions to the Town of Boone.

BE IT FURTHER RESOLVED that the Town Council extends to Judy D. Ferguson and her family blessings for good health and best wishes for the future.

Adopted this 16th day of February, 2017.

ATTEST:

Rennie Brantz, Mayor

Christine Pope, Town Clerk

(RESOLUTION TO BE TYPED IN BOOK 3, PAGE 315)

REQUEST TO SCHEDULE SPECIAL MEETINGS

QUASI-JUDICIAL HEARING

SEWER SERVICE REQUEST - W. BRETT SCANTLIN

Town Attorney Allison Meade opened a public hearing at 6:20 p.m. to hear sworn testimony on a request for sewer service to property located on/near 694 Landfill Road. Brett Scantlin, being duly sworn, noted this request was submitted on behalf of Appalachian State University as their Department of Sustainable Technology operates a small research facility on the land, which is leased to them by Watauga County. He added that since the facility has grown and would like to hold workshops, they are required to have a ADA-compliant restroom. Mr. Scantlin noted that the facility currently has a water account through the Town, but the county inspections office is requiring a bathroom; therefore, they need sewer service as well from the Town. Brian Raichle, being duly sworn, added that the research and outreach project has a greenhouse and is working on technologies to help farmers increase their cash flow and provide local food to communities, which will also help reduce the consumption of fossil fuels. He stated the project has received over \$400,000 in external funding from government agencies, but in order to keep the site open to the community they need a restroom. Mr. Raichle confirmed that ASU would pay for the cost of the extension. Mr. Scantlin pointed out that the county manager, Deron Geouque, also provided a letter noting hardship, which was included in the Council packet.

Public Works Director Rick Miller, being duly sworn, advised he had no concerns or issues with this request. He added that the applicant already receives water service, so it would make sense to add sewer service. Mr. Miller stated that, to his knowledge, they are not currently paying for sewer service to the Town, but will be charged double rates since it is located outside town limits. With no further testimony, Ms. Meade closed the hearing at 6:26 p.m.

Upon a motion by Council Member Mason, seconded by Council Member Underdown Collins, Council moved to approve the request for sewer service by Appalachian State University to property located on/near 694 Landfill Road with a predicted usage of 15 gallons per day, because it is a hardship situation and they need appropriate treatment of waste water.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

COUNCIL MATTERS**CONSIDERATION OF ITEMS HEARD AT JANUARY PUBLIC HEARING****CASE 20160796 KING AND COLLEGE MIXED-USE PLANNED DEVELOPMENT**

Robert Flannigan has filed a Zoning Map Amendment Petition for a planned development consisting of a mixed-use building containing both residential and commercial uses, along with a separate townhouse building for properties located at and near 302 W. King Street (Watauga County PINs 2900988588000 and 2900988402000). The mixed use building will contain 60 dwelling units with 60 bedrooms, with the following uses proposed to be allowed for the commercial portion of the building: Use 11.21 Medical Office Category 2. The townhouse building will contain 2 dwelling units with a total of four bedrooms.

Planning Director Jane Shook presented the request and noted there were no changes since the public hearing. She added that the Planning Commission recommended approval with eight conditions.

Members of Council voiced their support for this request and asked the town attorney for information regarding the possibility of this development joining the Municipal Service District (MSD). Town Attorney Allison Meade noted that the parcel could become part of the MSD through a petition submitted by the property owners or the Town, upon public hearing and other certain prerequisites including resolution, could amend the MSD to include the parcel. Ms. Meade stated Council could consider adding the condition that the applicant agree to petition to join the MSD effective the fiscal year following issuance of the certificate of occupancy (CO). The

applicant confirmed that he was in agreement with the eight conditions noted by the Planning Commission, but was reluctant to agree to become part of the MSD within one year of CO issuance. He felt that this should be a separate issue from approval of the planned development request and felt it was too early for the project to absorb the additional tax.

Town Manager John Ward noted that, with the future Marketplace development and possibly Rivers Walk upon proper application, Council might consider a future study on the entirety of the MSD and bringing in others who Council may warrant need to be included as well. Mr. Ward stated that by doing so, Council could take one action to impact the MSD rather than parcel-by-parcel. Upon further discussion, the applicant agreed to a ninth condition requiring that the property owner petition to join the MSD effective two years after issuance of the certificate of occupancy. Brief discussion ensued regarding the retaining wall and vegetation as a possible buffer as well as parking requirements.

CASE 20160796 VOTE #1:

Upon a motion by Council Member Underdown Collins, seconded by Council Member Mason, Council moved that the proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive Plan and other applicable, adopted plans of the Town which relate to this application, because it is consistent with Comprehensive Plan Section 2.1.1 (D). Economic development encourages the revitalization and use of currently underutilized structures, vacant sites and the infrastructure of the subject site. The proposed development is also consistent with Comprehensive Plan 1.2, the growth strategy map, in which the subject is located in a primary growth area where term growth is especially encouraged. This planned development will add higher quality standards than would be required and encourages innovative designs, arrangement of buildings and open spaces that will provide an attractive, environmentally sensitive site. The planned development will produce a development that will function as a cohesive, unified project that will not substantially affect the use of the surrounding properties; it will not hinder the development of surrounding property in accordance with the adopted plans and policies of the town. It offers the transition from a high-density development to a lower-density neighborhood as well as addressing the parking needs in a positive and aesthetic manner.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Lynne Mason, Mayor Pro Tem
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE 20160796 VOTE #2:

Upon a motion by Council Member Underdown Collins, seconded by Council Member Mizelle, Council moved to approve the proposed amendment to the Town's zoning map and believe approval is reasonable and in the public interest for the reasons previously stated and subject to the applicant meeting all of the following conditions:

1. Where there is a conflict between the applicant information and the plans (site plans and architectural plans bearing a received date of Jan. 13, 2017), the plans shall control. Insignificant deviations may be permitted to comply with the requirements of the UDO.
2. Any commitments and representations concerning the proposed project made by the applicant or its (his or her) representatives at the public hearing shall also become a condition of the permit, and a basis for a stop work order and/or permit revocation if violated.
3. Final plans shall be submitted that are in compliance with the provisions of the UDO and other provisions of the Town Code.
4. No more than two unrelated persons are allowed to live in the townhouse portion of the proposed development.

5. The applicant will work with the Town to implement the appropriate sidewalk material in accordance with the downtown sidewalk plans.
6. The applicant be provided flexibility to work with the Town and neighbors related to fencing locations and type.
7. The applicant will fund traffic calming speed humps along Wallace Circle as determined appropriate by Public Works prior to the CO being issued.
8. The applicant shall construct a guard rail along Campus Ridge Drive in accordance with the Traffic Analysis Report.
9. The applicant will agree that they will petition to join the MSD (Municipal Service District) to be effective two (2) years following the year in which the CO is issued.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jeannine Underdown Collins, Council Member
SECONDER:	Charlotte Mizelle, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE PL 00145-010417 BROWN OF BOONE III, LLC

The Town has initiated the zoning of a portion of property (Watauga County PIN 2921303920000) owned by Brown of Boone III, LLC to B3 General Business and Corridor District Overlay to coincide with the voluntary annexation of the property which occurred Jan. 19, 2017, with an effective date of Feb. 16, 2017.

CASE PL00145-010417 VOTE #1:

Upon a motion by Council Member Mizelle, seconded by Council Member Underdown Collins, Council moved that the proposed amendment to the Town's zoning map is consistent with the Town's Comprehensive Plan and other applicable, adopted plans of the Town which relate to this application because that zoning had been in effect previously when in the extraterritorial jurisdiction and under Boone's zoning jurisdiction.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Charlotte Mizelle, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE PL00145-010417 VOTE #2:

Upon a motion by Council Member Mizelle, seconded by Council Member Clawson, Council moved to approve the proposed amendment to the Town's zoning map and believe approval is reasonable and in the public interest for the reasons previously stated and because the State removed the extraterritorial jurisdiction from the Town of Boone's zoning authority, the Town is simply putting the parcel back in now that it is part of the Town of Boone.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Charlotte Mizelle, Council Member
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE PL 00147-010417 ADMINISTRATIVE MECHANISMS/ETJ MODIFICATIONS UDO TEXT AMENDMENT

The Town of Boone has initiated a text amendment to modify the UDO to remove or alter regulations related to the extraterritorial jurisdiction. Modifications are necessary due to the recent decision by the NC Supreme Court in December 2016, which upheld Senate Bill 865, which removed the Town of Boone's ability to exercise any extraterritorial jurisdiction-related powers, effective Jan. 10, 2017.

CASE PL00147 VOTE #1:

Upon a motion by Council Member Mason, seconded by Council Member Clawson, Council moved that the proposed amendment to the Town's zoning ordinance is consistent with the Town's Comprehensive Plan and other applicable, adopted plans of the Town which relate to this application because it brings the UDO into compliance with state law and makes appropriate changes considering the Town of Boone no longer has an ETJ.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Loretta Clawson, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CASE PL00147 VOTE #2:

Upon a motion by Council Member Mason, seconded by Council Member Underdown Collins, Council moved to approve the proposed amendment to the Town's zoning ordinance and believe approval is reasonable and in the public interest because it brings the UDO into compliance with state law.

§ 2.01 BOARD OF ADJUSTMENT.

2.01.01 The Board is a quasi-judicial body which acts on specified appeals, variances, major subdivision preliminary plat approval and special use permit requests. Except for major subdivision preliminary plat approval, the decisions by the Board represent the final decision by the town.

2.01.02 Appointment and terms of Board of Adjustment.

A. Number of members. There shall be a Board of Adjustment consisting of ~~eight~~ five regular members and ~~eight~~ three alternate ~~members~~. Alternates shall serve on the Board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a regular member ~~only in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a regular member position~~. Each alternate, ~~while attending~~ When serving in place of a regular member, ~~at any regular or special meeting of the Board, an alternate member and serving on behalf of any regular member,~~ shall have ~~and may exercise~~ all the powers and duties of a regular member.

~~1. Number of town members. Five regular members of the Board of Adjustment and five alternates shall reside within the Town (hereafter, "resident members").~~

~~2. Number of ETJ members. Three regular members and three alternates shall reside within the town's ETJ (hereafter, "ETJ members"). Should the town's ETJ be expanded or the ratio of the population of the ETJ relative to the population of the town increase or decrease, in accordance with G.S. § 160A-362 and as specified herein, the town will adjust the number of members from the ETJ in order to maintain proportional representation based on population for residents of the ETJ relative to the town. However, the resident members may never number fewer than five regular members and five alternates, so if necessary to maintain~~

~~proportionality, the full size of the Board shall be increased. There shall be at all times at least one representative of the ETJ on the Board of Adjustment.~~

~~— B. Adjustment of ratio of town and ETJ members. Within six months of the publication of the decennial census information for the Town of Boone and Watauga County, conducted by the United States Census Bureau, the Administrator shall inform the Town Council of any change in the ratio of town population to ETJ population which requires a modification in the number of town and ETJ members. Thereafter, as positions open by resignation, removal for cause or absence, or expiration of term, the number of members shall be adjusted through the appointment process to achieve the required balance between town and ETJ members. An ETJ position shall be created or the number of ETJ positions reduced on the Board of Adjustment when the population of the entire ETJ constitutes a full fraction of the town's population divided by the total membership of the Board of Adjustment or when the population of the ETJ falls below a full fraction of the town's population divided by the total membership of the Board of Adjustment, respectively.~~

~~— C. Appointment of members to the Board of Adjustment.~~

~~— 1. Town appointments. All town members of the Board shall be appointed by the Town Council following the procedures of § 35.01 of the Municipal Code.~~

~~— 2. ETJ appointments.~~

~~— a. Council procedure. When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the increased population requires that a new ETJ member be appointed, the Town Council shall adopt a resolution requesting that the Watauga County Board of Commissioners appoint a qualified person as a member. Prior to adopting the resolution, when it pertains to positions created by vacancy due to the expiration of a term or resignation of a member, the Town Council may itself solicit applications for the position, and it may transmit its two top choices for each position to the Watauga County Board of Commissioners. If, after a protracted time, the Council has received a single application or no applications, it may nevertheless request that the Watauga County Board of Commissioners proceed with an appointment.~~

~~— b. Watauga County Board of Commissioners procedure. The Watauga County Board of Commissioners shall consider the choices directed to it by the Council. If the Watauga County Board of Commissioners is unwilling to appoint either of the two applicants submitted by the Town Council, it may appoint a person of its own choosing. However, before appointing a new person to the Board, the Watauga County Board of Commissioners must hold a public hearing on the selection.~~

~~— i. Notice. Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area.~~

~~— ii. Qualifications. The Watauga County Board of Commissioners shall select appointees only from those who apply at or before the public hearing and are otherwise qualified. A qualified person is one who lives in the ETJ, who expresses a willingness to familiarize herself with the town's UDO, Comprehensive Plan and all other duly adopted plans and ordinances relating to the regulation of development within the Town planning jurisdiction, who agrees to apply in good faith the town's Unified Development Ordinance and Comprehensive Plan, and who expresses a willingness to serve on the Board. If, despite good faith efforts, enough qualified residents of the ETJ cannot be found to fill the seats reserved for residents of such area, then the Watauga County Board of Commissioners may appoint other residents of the county who are otherwise qualified, including residents of the Town to fill these seats.~~

~~— iii. The Commissioners shall make the appointment within 45 days following the public hearing. If the Watauga County Board of Commissioners fails to make an appointment within 90 days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ.~~

~~**BD. Appointments; a**~~Avoidance of conflicts of interest. All town members of the Board shall be appointed by the Town Council following the procedures of § 35.01 of the Municipal Code.

In making appointments to the Board, ~~both~~ the Town Council ~~and the Watauga County Board of Commissioners~~ shall consider the employment of current Board members ~~and alternates~~, and their spouses, and shall strive to create such employment diversity upon the Board so as to minimize the likelihood that a conflict of interest with regard to a particular case will prevent the Board from assembling a ~~full Board of eight members or five members, according to the quorum requirements to hear the case~~quorum. Therefore, in order to be appointed to the Board, an applicant must provide the Town ~~or County~~ with information concerning his or her employment and that of his or her spouse, if any.

~~CE.~~ Term. Regular members and alternates shall be appointed for three year staggered terms, but may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms only. Members may be reappointed to successive terms without limitation.

~~DF.~~ Absences.

1. Absences due to sickness, death or other emergencies of like nature shall be recognized as excused absences and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board. In the event of a long illness or other such cause for prolonged absence, however, as determined by the Administrator ~~and confirmed by the Council~~, the member shall be replaced; provided, however, that -

~~— a.~~ Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's proposed or actual removal.

2. Regular Board members shall be automatically removed for unexcused failure to attend three consecutive meetings or for unexcused failure to attend 50% of the regular meetings in any 12 month period. For example, if a member misses six of 12 meetings during a 12 month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. Alternate members shall likewise be removed for unexcused failure to attend or participate in three consecutive meetings for which the member's attendance is requested.

3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.

4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.

~~EG.~~ Residency. All members must be residents within the Town corporate limits ~~or ETJ~~. If a regular or alternate ~~resident~~ member moves outside the Town limits, or if an ETJ regular or alternate member moves outside the ETJ, that shall constitute a resignation from the Board.

~~— H.~~ ~~Alternates. A resident member alternate may sit only in lieu of a regular resident member and an ETJ alternate may sit only in lieu of the regular ETJ member. When so seated, alternates shall have the same powers and duties as the regular member they replace.~~

~~FI.~~ Resignation. A member of the Board may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.

~~JG.~~ Removal. The Administrator or a member of the Town Council may propose removal of a member for good cause related to the performance of Board duties.

~~— 1.~~ Before removal, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

2.01.03 Meetings of the Board of Adjustment.

A. Schedule. At a time which it establishes, the Board shall conduct a monthly meeting to be held so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Regardless of whether or not a quorum of the Board is present, any duly advertised regular or special meeting may be continued to a later date ("continuation meeting"). Continuation meetings may be scheduled without additional notice and advertising if the date, time, and location of the continuation meeting is adopted and announced by a majority of the members present and announced by the Board at a duly advertised meeting.

B. Rules of procedure. The Board shall conduct its meetings in accordance with its duly adopted Rules of Procedure so long as they are not inconsistent with the provisions of this ordinance or state law. The Rules of procedure may address any of the following:

1. Scheduling and order of cases before the Board; and
2. Representation; and
3. Intervention of a person other than the applicant or appellant who has a special and substantial interest in the outcome of the case to fully participate as a party in the hearing; and
4. Pre-hearing procedures; and
5. Hearing procedures; and
6. Admissibility of evidence; and
7. Decision-making procedures; and
8. Length of meetings; and
9. Special meetings; and
10. Meeting decorum pursuant to Subsection 6.01.07(B); and

11. Such other matters as may be needed for the effective and proper functioning of the Board.

C. Open meetings. The Board and any subcommittee, advisory group, or working group, by whatever name or designation (hereafter referred to as a "subcommittee") shall operate in compliance with the North Carolina Open Meetings law, codified as G.S. §§ 143-318.9 et seq. At a minimum, all meetings of the Board or any subcommittee shall require all of the following:

1. A meeting which is open to the public, except as to closed session conducted in accordance with the law for the reasons authorized by law.

2. Minutes of the meeting, a copy of which shall be provided, once approved by the Board, to the Town Clerk.

2.01.04 Board of Adjustment officers.

A. Unless the Town Council designates the Chair and Vice-Chair of the Board, it shall retain the power to choose its own Chair and Vice-Chair, ~~but both must be resident members of the Board~~. The people so designated shall serve in these capacities for terms of one year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms by the Town Council.

1. The Board shall designate the Chair and Vice-Chair of any subcommittee.

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

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

2.01.05 Duties of the Board of Adjustment.

A. The Board is a quasi-judicial body that shall hear and decide:

1. Appeals from any order, decision, requirement, interpretation, or determination made by the Administrator, as provided in Article 6 Board of Adjustment Hearings.

2. Applications for special-use permits, as provided in Article 6 Board of Adjustment Hearings.

3. Applications for variances, as provided in Article 6 Board of Adjustment Hearings.

4. Applications for major subdivision preliminary plat approval, as provided in Article 6 Board of Adjustment Hearings.

5. Appeals of the grant or denial of an application for a certificate of appropriateness by the Historic Preservation Commission.

6. Any other matter the Board is required to act upon by any other town ordinance.

B. Limitations on the powers of the Board of Adjustment.

1. No individual member of the Board shall purport to speak or act on behalf of the Board without action by the Board or authorization in the Board's duly adopted rules of procedure explicitly authorizing the member to speak or act on its behalf.

2. No individual member of the Board, or the Board itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Board to speak or act on its behalf.

3. Without an express grant of authority or explicit authorization by the Council, no individual member of the Board, or the Board itself, may direct staff to take action requiring the expenditure of Town funds.

4. The Board shall not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Board on tasks assigned by the Town Council or its designee.

5. The Board may create subcommittees or working groups within its membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

(Ord. passed 12-16-2013)

§ 2.02 PLANNING COMMISSION.

2.02.01 The Planning Commission is an advisory board which makes recommendations to Council on future growth and development issues that affect the town. The Planning Commission reviews and makes recommendations to the Council pursuant to Subsection 2.02.06.

2.02.02 Appointment and terms of Planning Commission members.

A. Number of members. There shall be a Planning Commission consisting of ~~7~~⁴ members.

~~1. Number of town members. Eight members of the Planning Commission shall reside within the Town. To the extent a qualified person can be found, one of the Town members shall be a resident of Boone and a full-time student of Appalachian State University.~~

~~2. Number of ETJ members. Five members shall reside within the Town's extraterritorial planning area (hereafter "ETJ"). Should the Town's ETJ be expanded or the ratio of the population of the ETJ relative to the population of the Town increase or decrease, in accordance with G.S. § 160A-362 and as specified herein, the Town will adjust the number of members from the ETJ in order to maintain proportional representation based on population for residents of the ETJ. There shall be at all times at least one representative of the ETJ on the Planning Commission.~~

~~B. Adjustment of ratio of town and ETJ members. Within six months of the publication of the decennial census information for the Town of Boone and Watauga County, conducted by the United States Census Bureau, the Administrator shall inform the Town Council of any change in the ratio of town population to ETJ population which requires a modification in the number of town and ETJ members. Thereafter, as positions open by resignation, removal for cause or absence, or expiration of term, the number of members shall be adjusted through the appointment process to achieve the required balance between town and ETJ members. An ETJ position shall be created or the number of ETJ positions reduced on the Planning Commission when the population of the entire ETJ constitutes a full fraction of the Town's population divided by the total membership of the Planning Commission or when the population of the ETJ falls below a full fraction of the town's population divided by the total membership of the Planning Commission, respectively.~~

C. Appointment of members to the Planning Commission-

~~1. Town appointments. All town m~~Members of the Planning Commission shall be appointed by the Town Council following the procedures of § ~~35.01~~ of the Municipal Code.

~~2. ETJ appointments.~~

~~a. Council procedure. When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the resulting increased population requires that a new ETJ member be appointed, the Town Council shall adopt a resolution requesting that the Watauga County Board of Commissioners appoint a qualified person to serve as a member. Prior to adopting the resolution, when it pertains to positions created by vacancy due to the expiration of a term or resignation of a member, the Town Council may itself solicit applications for the position, and it may transmit its two top choices for each position to the Watauga County Board of Commissioners. If, after a protracted time, the Council has received a single application or no applications, it may nevertheless request that the Board of Commissioners proceed with an appointment.~~

~~b. Watauga County Board of Commissioners procedure. The Watauga County Board of Commissioners shall consider the choices directed to it by the Council. If the Board of Commissioners is unwilling to appoint either of the two applicants submitted by the Town Council, it may appoint a person of its own choosing. However, before appointing a new person to the Planning Commission, the Watauga County Board of Commissioners must hold a public hearing on the selection.~~

~~i. Notice. Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area.~~

~~ii. Qualifications. The Watauga County Board of Commissioners shall select appointees only from those who apply at or before the public hearing and are otherwise qualified. A qualified person is one who lives in the ETJ, who expresses a willingness to familiarize herself with the town's UDO, Comprehensive Plan and all other duly adopted plans and ordinances relating to the regulation of development within the Town planning jurisdiction, and who expresses a willingness to serve on the Planning Commission. If, despite good faith efforts, enough qualified residents of the ETJ cannot be found to fill the seats reserved for residents of such area, then the Watauga County Board of Commissioners may appoint other residents of the county who are otherwise qualified, including residents of the town to fill these seats.~~

~~iii. The Commissioners shall make the appointment within 45 days following the public hearing. If the Watauga County Board of Commissioners fails to make an appointment within 90 days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ.~~

D. Term. Planning Commission members shall generally be appointed for four year staggered terms, but members may continue to serve until their successors have been appointed. ~~The An~~ Appalachian State University student member shall serve a term of one year. Vacancies which occur for reasons other than the expiration of a term shall be filled as they occur only for the unexpired remainder of the term.

1. Members may be appointed to no more than three successive terms. A former member may be reappointed following a one-year period of non-membership.

E. Absences.

1. Absences due to sickness, death or other emergencies of like nature shall be recognized as excused absences and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board.

a. For example, if a member misses six of twelve meetings during a 12 month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings.

b. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator ~~and confirmed by the Council~~, the member shall be replaced.

c. Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal.

2. Planning Commission members shall be automatically removed for failure to attend three consecutive meetings or for failure to attend 50% of the regular meetings in any 12 month period.

3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.

4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.

F. Residency. All members must be residents within the town corporate limits ~~or ETJ~~. If a resident member moves outside the town ~~or if an ETJ member moves outside the ETJ limits~~, that shall constitute a resignation from the Planning Commission, effective upon the date a replacement is appointed by the Council.

G. Resignation. A member of the Planning Commission may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.

H. Removal. The Administrator or a member of the Town Council may propose removal of a member for any other good cause related to the performance of Board duties.

1. Before removal, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

2.02.03 Meetings of the Planning Commission.

A. Schedule. The Planning Commission shall conduct a meeting no less than quarterly, or more often as it shall determine or require, to be held so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Regardless of whether or not a quorum of the Planning Commission is present, any duly advertised regular or special meeting may be continued to a later date ("continuation meeting") without additional notice and advertising if the date, time, and location of the continuation meeting is adopted and announced by a majority of the members present. ~~it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Continuation meetings may be scheduled without additional advertising if the date, time, and location of the meeting is adopted and announced by the Commission at a duly advertised meeting.~~

1. The Planning Commission shall also attend any public hearings on proposed ordinance amendments scheduled by Town Council. ~~These public hearings will be scheduled no less frequently than on a quarterly basis in February, May, August and November.~~

B. Rules of procedure. Since the Commission has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Article 6. However, it shall conduct its meetings so as to obtain necessary information and to promote the free and full exchange of ideas.

1. In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Planning Commission, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question or if no one is designated the Commission can elect a presiding officer by majority vote.

2. The agenda shall include only those matters within the responsibilities and powers of the Planning Commission as provided herein.

a. Absent an emergency matter, which can be placed upon the agenda by a unanimous vote of those present, only matters on the published agenda may be acted upon by the Commission.

b. Issues considered under agenda items entitled, "other matters" or similar language shall only be for information, and other items or issues for information may be added to the agenda by majority vote of those present.

3. Meetings of the Planning Commission or subcommittee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.

4. The business of the Planning Commission or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Planning Commission or subcommittee shall be respectful to each other and shall avoid interrupting each other.

C. Open meetings. The Planning Commission shall operate in compliance with the North Carolina Open Meetings law, codified as G.S. §§ 143-318.9 et seq. (hereafter, "the law"). At a minimum, all meetings of the Planning Commission or any subcommittee, advisory group, or working group of the Commission, by whatever name or designation (hereafter referred to as a "subcommittee") shall require all of the following:

1. Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin Board for that purpose in Town Hall, unless a longer notice is required by this ordinance or state law. If an agenda has been distributed to members of the Commission, it shall also be posted.

a. An "official meeting" occurs whenever a regularly scheduled meeting of the Planning Commission or subcommittee occurs, whether or not a quorum is present, or a "special meeting" when a majority of the Planning Commission or subcommittee meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business.

b. "Deliberate" includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision.

c. An "emergency meeting" is one that concerns generally unexpected circumstances which require the immediate consideration of the Planning Commission or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.

2. A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.

3. Minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Commission or subcommittee.

a. Minutes of the Planning Commission or subcommittee shall be subject to revision and adoption by the group as a whole.

D. Speakers. At any meeting of the Planning Commission or subcommittee, if the meeting is opened for public comment, any person wishing to address the body or subcommittee shall state his or her name and whether or not he or she is a resident of the town ~~or E.T.J.~~

1. Speakers shall be recognized in the order in which they have signed up.

2. Unless a different time limit is adopted by the Planning Commission or subcommittee, no member of the public shall be allowed to speak for more than five minutes.

3. Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Commission or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.

4. All persons addressing the Commission or subcommittee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

2.02.04 Quorum and voting.

A. A quorum is necessary for the Planning Commission to take official action.

1. ~~A quorum shall consist of at least seven members.~~ A quorum shall consist of a majority of the members of the Commission. Vacant positions are not counted as members for purposes of calculating quorum. A member who is present shall be counted for purposes of quorum even if he or she is recused from voting.

B. All actions or recommendations of the Planning Commission or subcommittee are only effective or adopted upon majority vote of the members present, following a motion and second.

1. In the case of a divided vote on any question on which the Commission is required to act, the record shall include the vote of each member. When such action is to be reported to the Council, the committee, task force, or advisory body shall not only report the action or recommendation adopted, but the vote by which it was adopted.

2. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Commission, and the members of the Commission can hear the member.

3. A roll call vote shall be taken upon the request of any member.

~~4. ETJ members may vote on all matters considered by the Commission, regardless of the location of the property affected.~~

2.02.05 Planning Commission officers.

A. Unless the Town Council designates the Chair and Vice-Chair of the Planning Commission, it shall retain the power to choose its own Chair and Vice-Chair. The Planning Commission shall designate the Chair and Vice-Chair of any subcommittees. The people so designated shall serve in these capacities for terms of one year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms only.

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

2.02.06 Powers and duties of Planning Commission.

A. The Planning Commission may:

1. Make studies of the area within its jurisdiction and surrounding areas; and
2. Determine objectives to be sought in the development of the study area; and
3. Prepare and adopt plans for achieving these objectives; and
4. Develop and recommend to the Council policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner. The Planning Commission shall not, however, have the power to “initiate” changes to this ordinance, as the term “initiate” is used in, § 9.02; and
5. Advise the Council concerning the use and amendment of means for carrying out plans; and
6. Make findings and recommendations to the Council concerning proposed zoning text and map amendments, as provided for and in compliance with § 9.05; and

7. Review and either approve or deny proposed minor subdivision requests when a portion of the land to be subdivided lies within a Designated Water Supply Watershed District, based upon application of Articles 5 and 29 of this ordinance; and

8. Perform any other related duties that the Council may direct.

B. Limitations on powers of the Planning Commission.

1. No individual member of the Planning Commission shall purport to speak or act on behalf of the Commission without action by the Commission explicitly authorizing the member to speak or act on its behalf; and

2. No individual member of the Planning Commission, nor the Planning Commission itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Commission to speak or act on its behalf; and

3. Without an express grant of authority or explicit authorization by the Council, no individual member of the Planning Commission, nor the Commission itself, shall direct staff to take action requiring the expenditure of town funds; and

4. The Planning Commission shall not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Planning Commission on tasks assigned by the Town Council or its designee; and

5. The Planning Commission may create subcommittees or working groups within its membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

2.02.07 Advisory committees.

A. From time to time the Council may appoint one or more individuals to help the Planning Commission carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the Council may appoint advisory committees to consider the thoroughfare plan, bikeway plans, community appearance plans, housing plans, economic development plans, and the like. Such advisory

committees shall be created and operate, unless otherwise designated by the Council, according to the procedures established under Municipal Code §§ 30.51, and 35.01, et seq.

B. 1. Members of such advisory committees shall sit as nonvoting members of the Planning Commission when such issues are being considered, and they shall be invited to lend their talents, energies, and expertise to the Planning Commission. However, all formal recommendations of the Planning Commission to the Council shall be made by the Planning Commission itself.

2. As with Commission members, unless the Council takes specific action to excuse the absences and reappoints an advisory committee member after being informed by the Administrator of the member's removal, an advisory committee member shall be automatically removed for failure to attend three consecutive meetings or for failure to attend 50% of the meetings within any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the committee. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for any other good cause related to the performance of committee duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

C. Nothing in this section shall prevent the Council from establishing independent advisory groups, committees, or commissions to make recommendations on any issue directly to the Council.
(Ord. passed 12-16-2013)

ARTICLE 6: BOARD OF ADJUSTMENT HEARINGS

Section

6.01 Provisions applicable to all hearings

6.02 Special use permit, transitional zones and major subdivision preliminary plat applications

6.03 Variances

6.04 Appeal of administrative decision

6.05 Appeal of decisions of Community Appearance and Historic Preservation Commissions

§ 6.01 PROVISIONS APPLICABLE TO ALL HEARINGS.

6.01.01 General provisions.

A. All hearings of the Board shall be conducted in a quasi-judicial manner as described herein.

B. Subject to the specific provisions of Section 6.04 as to appeals, the Board shall hear and decide every appeal and application within a reasonable time.

C. The Board's packet shall include the Administrator's analysis of the issues, identifying any information, documents, and adopted plans material to the case. The Administrator's analysis may also include recommendations as appropriate.

D. Each hearing conducted by the Board shall provide an opportunity for parties and interested members of the public to testify and offer competent evidence, but the Board may limit the time available for each person offering testimony and may exclude testimony and evidence which is cumulative or redundant.

E. Hearings shall be conducted in compliance with the Board's duly adopted rules of procedure.

F. The town is considered a party in every hearing before the Board.

G. The Board may continue any hearing until a subsequent meeting and may keep a hearing open to take additional information up to the point a final decision is made.

6.01.02 Quorum.

A. A quorum shall consist of four (4) members for all action that may be taken by the Board. A quorum is necessary for the Board to take official action, except that at any duly-noticed regular or special meeting a majority of the Board then present, whether a quorum or not, may vote to continue the meeting to a specified later date, time and location.

~~1. For cases involving property located in whole or in part in the ETJ, a quorum for the Board shall consist of seven members.~~

~~2. For cases involving property located wholly within the town's corporate limits, a quorum for the Board shall consist of five members.~~

~~B. A member who has withdrawn from the meeting and left the premises shall not be counted as present for purposes of determining whether a quorum is present.~~

6.01.03 Voting.

A. The concurring vote of four-fifths of the Board 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 paragraph, 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 calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

B. Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused or has been allowed to withdraw from the meeting in accordance with this section.

CB. A member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to:

1. A member having a fixed opinion prior to hearing the matter that is not susceptible to change;
2. Undisclosed ex parte communications;
3. A close familial, business, or other associational relationship with an affected person; or
4. A financial interest in the outcome of the matter.

DC. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

ED. A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.

FE. Except as authorized in this section, a motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.

GF. A roll call vote shall be taken upon the request of any member.

~~G. Both ETJ and resident members must participate and vote on all matters coming before the Board involving property located in whole or in part in the ETJ. On all other matters coming before the Board, only resident members may participate and vote.~~

6.01.04 Notice of hearing.

A. The Administrator shall give notice of any hearing of the Board as follows:

1. Contents of notice. Every notice shall state the date, time, and place of hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

2. Mailed notice. Notice shall be mail by depositing in the mail at least ten days, but not more than 25 days, prior to the date of the hearing to:

- a. The person or entity whose appeal, application, or request is the subject of the hearing;
- b. The owner of the property that is the subject of the hearing if the owner did not initiate the hearing;
- c. The owners of all parcels of land abutting the parcel of land that is the subject of the hearing;
- d. The owners of real property located within 150 feet of the subject lot(s);
- e. The owners of any real property in a protected district, whose property boundary has triggered application of transitional zone standards; and

f. Any other persons who have submitted a written request for notice and intervening parties so long as the request for notice or intervention request have been filed prior to notification being mailed.

3. Posted notice. At least ten days, but not more than 25 days prior to the date of the hearing, the Administrator 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. The signs to be posted shall include the date, time and location of the hearing and shall direct the public to detailed information about the hearing.

6.01.05 Subpoenas.

A. The Board through the Chair, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compel the production of evidence.

B. To request issuance of a subpoena, persons with standing must make a written request to the Chair, on a form provided by the Administrator, explaining why it is necessary for certain witnesses or evidence to be compelled.

C. The Chair shall issue requested subpoenas the Chair determines to be relevant, reasonable in nature and scope, and not oppressive.

D. The Chair shall rule on any motion to quash or modify a subpoena.

E. Decisions regarding subpoenas made by the Chair may be appealed to the full Board.

F. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

6.01.06 Modification of applications after distribution of board book except appeals of staff decisions.

A. Modification of application between distribution of the board book and the board meeting.

1. Modification in response to Administrator's recommendation or request. An applicant may not significantly modify an application between the distribution of the Board Book containing the staff report of the case and the Board meeting unless the proposed modification is in direct response to a specific request or recommendation by the Administrator.

a. A proposed modification, even in response to the Administrator's recommendation or request, shall be submitted to the Administrator prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification.

b. If the Administrator determines that the applicant did not submit the proposed modification prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the hearing being rescheduled until the next regularly scheduled meeting of the Board or withdrawal of the proposed modification.

2. Insignificant or minor modifications in an application. An applicant may make a non-substantial modification to an application between the distribution of the Board book containing the staff report and the scheduled hearing.

a. A proposed non-substantial modification shall be submitted to the Administrator prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification. However, if an applicant proposes an insignificant modification to an application during the scheduled hearing, and the Administrator indicates that adequate time exists to evaluate the insignificant modification can be fully evaluated with or without a recess by the Board, the modified application may be acted upon by the Board.

b. If the Administrator determines that the applicant did not submit the proposed modification prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the hearing being rescheduled until the next regularly scheduled meeting of the Board or withdrawal of the proposed modification.

3. Major modification of an application. An applicant seeking to significantly modify an application between the distribution of the Board Book containing the staff report of the case and the Board meeting, whether in response to staff recommendations or self-initiated, must file a new application.

4. Determination as to whether a proposed modification is insignificant, minor or major. The Planning Director shall make the determination as to whether a modification is "insignificant", "minor" or "major" in accordance with Section 4.16. The determination of the Planning Director shall constitute the final decision of the town and is not appealable.

B. Modification of application in response to concerns and issues raised at the hearing.

1. In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board, an applicant may agree to modify an application, including the plans and specifications submitted.

2. Unless such modification is so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed change without revised plans before it, the Board may approve the application with the condition that the permit will not be issued until plans reflecting the agreed upon changes are submitted and approved by the Administrator.

6.01.07 Testimony and documentary evidence.

A. Oaths. All persons who present testimony to the Board shall be sworn. The Chair of the Board or any member temporarily acting as Chair, and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board.

1. Any person who, while under oath during a proceeding before the Board, willfully swears falsely is guilty of a Class 1 misdemeanor.

B. Speakers. At any meeting of the Board, when the meeting is opened for public testimony:

1. Speakers shall be recognized in the order in which they have signed up unless a different order is requested by the Board and agreed upon by the speakers.

2. Each speaker wishing to address the Board shall state his or her name and then shall be sworn.

3. All persons addressing the Board shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. The Board may address in its rules of

procedures under what circumstances the presiding officer or Board may direct that a person who violates proper decorum may be removed, but the Chair shall have inherent authority to have removed a person who threatens other participants or member of the Board as well as any person whose behavior is so disruptive as to prevent the Board from continuing the hearing.

C. Competent evidence. The Board may address the standards for authenticating and admitting evidence in its duly adopted rules of procedure.

1. The rules of evidence as applied in the trial division of the General Court of Justice do not strictly apply. However, no evidence shall be consider unless:

a. The evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision making board to rely upon it; or

b. The evidence was admitted without objection,

2. To be considered “competent”, testimony shall generally meet the following:

a. The witness has personal knowledge of the subject of the testimony; and

b. The subject of the testimony is relevant to an issue involved in the hearing.

3. To be considered “competent”, documentary evidence shall generally require authentication. A document is authenticated by one of the following methods:

a. Certification, by signature, title and seal, of the person who is the custodian of the records; or

b. Information within the document which establishes its origin and reliability; or

c. Testimony by a person with personal knowledge of the documents origin and reliability.

4. If a copy is used in place of an original, testimony must be offered by a witness establishing the date and author of the document and confirming that such document is a true and accurate copy of the original document.

5. Photographs must be accompanied by testimony as to the date and place where the photograph was taken and a statement that the photograph fairly and accurately represents the subject is depicted.

6. Notwithstanding the forgoing, the term “competent evidence” shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:

a. The use of property in a particular way would affect the value of other property; or

b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety; or

c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

6.01.08 Burden of presenting evidence; burden of persuasion.

A. Evidence. The burden of presenting evidence shall be upon the party or parties urging a particular position. However, at a minimum, the applicant or appellant must provide competent evidence which addresses every material issue.

B. Credibility. In making its decision the Board may explicitly or implicitly make credibility determinations regarding the testimony of any witness, and where the Board has concluded that the testimony of a particular witness is incredible or otherwise unreliable, it is not bound to accept that testimony and may not only reject it but, if warranted, may make a contrary finding from the facts asserted.

C. Persuasion. The burden of persuasion shall be on the applicant or appellant or other party or person advocating a particular position.

6.01.09 Decisions of the Board.

A. The Board’s decision shall resolve all contested facts and their application to the applicable standards. The decision shall include individual findings of fact which support its conclusions of law.

B. All findings and conclusions made by the Board shall be based upon competent, material, and substantial evidence presented at the hearing, including all information in the Board’s packet, unless objected to by a party and excluded by the Board.

C. Each decision, including any conditions adopted by the Board, shall be reduced to writing and signed by the Chair or other authorized member of the Board.

D. The decision shall be effective upon filing with the Clerk of the Board.

E. The decision shall be delivered by personal delivery, electronic mail, or by first class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective.

1. The Clerk of the Board shall certify that proper notice shall be made.

F. Any conditions attached to an approval shall be entered on the face of any necessary zoning permit.

6.01.10 Reconsideration of Board action.

A. Whenever the Board denies an application for a special use permit, major subdivision preliminary plat approval or a variance, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the Board at a later time unless the applicant clearly demonstrates that:

1. Circumstances affecting the -subject property have substantially changed; or
2. New information is available that could not, with reasonable diligence, have been presented at a previous hearing and is submitted to the Administrator within 30 days of the denial.

a. The submission of purported new information under this section shall not, however, toll the period during which an applicant may seek judicial review of the denial and does not extend the period within which an appeal must be taken.

B. Notwithstanding Subsection 6.01.10(A), the Board may at any time consider a new application affecting the same property as an application previously denied.

1. A new application is one that differs in some substantial way from the one previously considered.

6.01.11 Judicial review.

A. Every decision of the Board shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. § 160A-393.

B. A petition for review by the superior court shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with Subsection 6.01.09(E).

C. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition. (Ord. passed 12-16-2013)

§ 6.02 SPECIAL USE PERMIT, TRANSITIONAL ZONES AND MAJOR SUBDIVISION PRELIMINARY PLAT APPLICATIONS.

6.02.01 An applicant for a special use permit or major subdivision preliminary plat approval must demonstrate all of the following:

- A. The application is complete;
- B. If completed as proposed, the development or subdivision:
 1. Will comply with the requirements of this ordinance;
 2. Will not materially endanger the public health or safety;
 3. Will not substantially injure the value of adjoining or abutting property;
 4. Will be in harmony with the area in which it is to be located;
 5. Will be in general conformity with the Comprehensive Plan, Boone 2030 Land Use Plan, and all other relevant plans officially adopted by the town; and
6. In cases involving transitional zones, meets the standards of Subsection 6.02.02.

6.02.02 Transitional zones.

A. Transitional zones are hereby established and may apply to the procedures and evidence required for development in any existing zoning districts. The land within a transitional zone may be used as permitted in the underlying district, but only pursuant to the procedures and standards applicable to these zones, as created under this section.

B. Transitional zones attach to each R1, R1A, RR, R2, and RA district, (hereinafter, “the protected district”) without regard to the current uses in that district. They are established for the purpose of creating special protections for residents of protected districts from the potential adverse impacts of certain potentially incompatible nearby development, based upon the legislative finding that the general requirements of this ordinance have not been sufficient to protect the residents of such protected districts from the adverse consequences of such developments and that the variety of circumstances which may need to be ameliorated in the face of such development are not amenable to a “one size fits all” approach.

C. The location of a transitional zone shall be determined as follows.

1. For designated development in an adjacent zone, the transitional zone shall be measured from the closest point of the area used or disturbed for the development to the boundary of any protected district as measured from all points along that boundary, the nearest point controlling applicability of this subsection.

2. For development subject to transitional zones within the protected districts, the transitional zone shall be measured from the closest point of the area used or disturbed for the development to the boundary of any protected lot, the nearest point controlling applicability of this subsection.

D. The size of the transitional zone varies with the type of development proposed. The following are the transitional zones as shown in the Table of Principal Uses, Table of Accessory Uses, and Table of Temporary Uses:

1. T50: transitional zone equal to 50 feet;
2. T75: transitional zone equal to 75 feet;
3. T125: transitional zone equal to 125 feet;
4. T200: transitional zone equal to 200 feet; and
5. T300: transitional zone equal to 300 feet.

E. Whenever a permit is sought to authorize development within a transitional zone, and any area used or disturbed for the development will be located within the pertinent transitional zone, a special use permit is required. If any portion of the area used or disturbed for the development falls within the transitional zone the standards of this Section shall apply to the entire development. The Board may deny the application if the requirements of this section are not met, or it may place reasonable conditions on the development, in addition to such conditions as may otherwise be reasonably imposed, specifically designed to mitigate the potential impacts identified herein.

1. Exemption. Development within an approved industrial park shall not be subject to the requirements of Subsection 6.02.02.

F. In addition to all other requirements of this ordinance which pertain to the proposed development, including but not limited to those relating to the location and placement of structures, the type and quantity of landscape buffering, the type and location of lighting, and the size of setbacks, in order to meet the requirements of this section, the applicant must also show:

1. That the planned development will effectively and to the greatest degree reasonably possible, mitigate the impacts of the proposed development upon the protected district, including but not limited to:

- a. Noise impacts;
- b. Light impacts; and
- c. Any other predictable negative effect, including but not limited to:
 - i. Negative visual effects;
 - ii. Negative traffic effects; and
 - iii. Negative health effects.

G. Because of the variable topography and characteristics of particular tracts of land within the town's zoning jurisdiction, the solutions incorporated into the development plan by the applicant must be tailored to specifically address the characteristics of the particular location in relation to the protected district. Only if an applicant can demonstrate by clear and convincing evidence that the normal requirements of the ordinance are themselves sufficient to protect the protected district may the application be approved without additional measures being incorporated into the site specific development plan.

6.02.03 Board of Adjustment action on special use permits and major subdivision preliminary plat applications.

A. Conclusions of law. In deciding whether to approve or deny an application for a special use permit or a major subdivision preliminary plat, the Board shall proceed according to the following format:

1. The Board shall determine whether the application is complete.

a. The burden of presenting a complete application to the Board shall be upon the applicant. The fact that the Administrator believes the application is complete or the applicant has submitted all requested supplemental documentation to the Administrator shall not bind the Board to conclude that the application is complete. The Board is the final arbiter of whether an application is complete.

i. If the Board concludes that the application is incomplete in a hearing conducted following a demand by the applicant for immediate action by the Board pursuant to Subsection 4.06.02(A) or the applicant refuses to provide the information determined by the Board necessary to complete the application, the application shall be denied.

ii. If the Board otherwise concludes that the application is incomplete the Board may deny the application or may give the applicant an appropriate opportunity to complete the application if the applicant expresses an interest in timely supplementing the application to make it complete.

A. A motion to continue the hearing in order to afford the applicant an opportunity to complete the application shall state the location, date and time of the reconvened hearing.

B. A case continued under these circumstances shall not require the same Board identity at the reconvened hearing, as the applicant will be expected to present his full case at that time.

b. If an application includes features which must be approved by another town board, commission or department, then such approvals must be obtained prior to the hearing.

2. If the Board concludes that the application is complete, the Board next shall consider whether the application complies with all of the applicable requirements of this ordinance. If the Board concludes that an

element of the application does not fully comply with this ordinance but has a minimal effect on the issues before the Board, it may conditionally approve the application. If the Board concludes that the application does not comply with all applicable requirements of this ordinance and conditions will not sufficiently cure the deficiencies or the Board concludes that the deficiency is material to the Board's approval, then the Board shall deny the application.

3. If the Board concludes that the application is complete and complies with this ordinance, if completed as proposed, before it may approve the permit or subdivision it must find all the following:

a. The development or subdivision as proposed will not materially endanger the public health or safety; and

b. The development or subdivision as proposed will not substantially injure the value of adjoining or abutting property; and

c. The development or subdivision as proposed will be in harmony with the area in which it is to be located; and

d. The development or subdivision as proposed will be in general conformity with the Comprehensive Plan, Boone 2030 Land Use Plan, and all other relevant plans officially adopted by the town.

B. Conditions. Even when a development or subdivision meets the criteria above, the Board may still impose conditions on an approval.

1. All conditions shall be reasonable and appropriate and shall be related to the predicted impacts of the development.

2. Unless the Board explicitly orders otherwise, every approval is conditioned upon the development being completed in accordance with the plans submitted by the applicant, the commitments and representations concerning the proposed development made by the applicant and representatives at the public hearing, and final conformity with all requirements of the UDO.

3. The Board may attach to a special use permit a condition limiting the permit to a specified duration and in appropriate situations may provide additional process including another public hearing after the special use has begun to evaluate unanticipated impacts, provided such a condition shall not be employed to terminate a special use for which substantial construction or reconstruction has occurred.

4. Without limiting the foregoing, conditions should normally require measures to address impacts on the:

a. Public health or safety; and

b. Values of adjoining or abutting properties; and

c. Harmony with the area in which it is located; and

d. In the case of transitional zones, noise, light, and other predictable negative effects such as visual, traffic and health.

6.02.04 Voting. The adoption of each conclusion of law under Subsection 6.02.03(A), which is required in order to issue the permit, authorize the preliminary plat or deny the application shall be by majority vote. Should any conclusion of law fail to be adopted, the application shall be denied.

6.02.05 Special use permits shall be recorded at the office of the Watauga County Register of Deeds. (Ord. passed 12-16-2013)

§ 6.03 VARIANCES.

6.03.01 A variance is specific to the lot and to the development for which it is requested and neither the nonconforming use of lands, buildings, or structures in the same zoning district; nor the permitted use of lands, buildings or structures in other zoning districts are grounds for the granting of a variance.

6.03.02 A variance granted must be specific and the minimum variance required.

6.03.03 Financial hardship alone does not constitute grounds for the granting of a variance.

6.03.04 The fact that a lot may be utilized for greater profit if the variance is granted is not grounds for the granting of a variance.

6.03.05 No change in permitted uses may be authorized by variance.

6.03.06 A variance may not enlarge or expand nonconformities.

6.03.07 In order to grant a variance, the Board must conclude based upon competent evidence:

A. Unnecessary hardship would result from the strict application of the ordinance; however it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property; and

B. The hardship results from conditions that are peculiar to the property such as location, size or topography; however 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; and

C. The hardship did not result from actions taken by the applicant or the property owner however 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 ordinance, such that public safety is secured and substantial justice is achieved.

6.03.08 In granting variances, the Board may impose appropriate conditions reasonably related to the condition or circumstance that give rise to the variance and which will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.

6.03.09 A variance may be granted for an limited or indefinite duration.

6.03.10 Water supply watershed variances.

A. Before a water supply watershed variance is heard by the Board, the Administrator shall notify in writing each local government having jurisdiction in the watershed as well as any entity using the watershed for water consumption.

1. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Administrator prior to a decision by the Watershed Review Board, which for this purpose shall be the Board of Adjustment. Such comments shall become a part of the record.

2. In considering the decision whether to recommend that a major variance from the requirements of Article 29 be granted, the Board shall apply the criteria of Subsection 6.03.07.

3. The Board may place appropriate conditions on the recommended approval of the major variance but they must be reasonably related to the variance.

B. If the Board recommends that a major variance be granted, the Administrator shall promptly prepare a preliminary record of the hearing and transmit it to the North Carolina Environmental Management Commission, (hereafter "EMC") for its consideration. The preliminary record shall include:

1. The variance application; and

2. The hearing notices; and

3. The evidence presented; and

4. Motions, offers of proof, objections to evidence, and rulings on them; and

5. Proposed findings and exceptions; and

6. The proposed decision, including all recommended conditions to be added to the permit. Proposed conditions should be appropriate and reasonably related to the variance.

C. The Board shall take final action in accordance with the decision by the EMC:

1. If the EMC approves the variance as proposed, the Administrator shall prepare a final decision granting the recommended major variance and the Board shall adopt the decision at its next meeting.

2. If the EMC approves the variance but makes modifications to the recommended major variance, the Administrator shall prepare a final decision, in accordance with the action of the EMC, and the Board shall adopt the modified decision at its next meeting.

3. In the EMC denies the recommend major variance the Administrator shall prepare a final decision in accordance denying the major variance, and the Board shall adopt the denial at its next meeting.

6.03.11 Special flood hazard area variance.

A. A special flood hazard area variances may be issued for:

1. 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;

2. Functionally dependent facilities if determined to meet the definition as stated in Article 34, provided such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

3. Any other requirements of Article 30.

B. Limitations on variances.

1. Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.

2. 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.

3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

4. Variances shall only be issued prior to development permit approval.

5. Variances shall only be issued upon:

a. A showing of good and sufficient cause;

b. A determination that failure to grant the variance would result in exceptional hardship; and

c. 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.

C. A written report addressing each of the factors in Subsection 6.03.11(D) shall be submitted by the applicant with the application for a variance.

D. The Board shall consider all technical evaluations, all relevant factors, all standards specified in other Sections of Article 30, and:

1. The danger that materials may be swept onto other lands to the injury of others;

2. The danger to life and property due to flooding or erosion damage;

3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

4. The importance of the services provided by the proposed facility to the community;

5. The necessity to the facility of a waterfront location as a functionally dependent facility, where applicable;

6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

7. The compatibility of the proposed use with existing and anticipated development;

8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

9. The safety of access to the property in times of flood for ordinary and emergency vehicles;

10. 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

11. 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.

E. Upon consideration of the factors listed in Subsection 6.03.11(D) and the purposes of this Article 30 Flood Damage Prevention, the Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of Article 30.

F. 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.

G. 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.

6.03.12 Voting. The adoption of each conclusion of law under Subsection 6.03.07 and the granting of a variance shall require a four-fifths vote of the Board. Should any conclusion of law receive less than a four-fifths vote, the variance shall be denied.

6.03.13 Variances shall be recorded at the office of the Watauga County Register of Deeds.
(Ord. passed 12-16-2013)

§ 6.04 APPEAL OF ADMINISTRATIVE DECISION.

6.04.01 The Board shall hear and decide appeals from decisions of administrative officials charged with enforcement of the ordinance. For purposes of this section a “decision” includes any final and binding order, requirement, or determination.

6.04.02 An appeal of an administrative decision is initiated by a person timely filing an Appeal to Administrative Decision application, in accordance with Article 4, accompanied by the required fee.

A. An appeal may be filed by any of the following:

1. A person who has an ownership interest in the property that is the subject of the decision being appealed;
2. A person who has a leasehold interest in the property that is the subject of the decision being appealed;
3. A person who has an interest created by easement, restriction or covenant in the property that is the subject of the decision being appealed;
4. A person who has an option or contract to purchase the property that is the subject of the decision being appealed;
5. A person who was the applicant for the decision in question;
6. Any other person who will suffer special damages as the result of the decision being appealed;
7. An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal; or
8. The town.

B. An appeal of an administrative decision, including the imposition of penalties, must be taken within 30 days after the date of the receipt of the notice of the decision in the case of the owner or the applicant, or 30 days from actual or constructive notice by any other person with standing to appeal.

1. The date of receipt shall be conclusively presumed as three days after the notice of the decision or order appealed from has been deposited in the United States mail by the Administrator, with proper postage affixed, and addressed in accordance with the provisions of Section 1.13 except that an earlier date can be established by a return receipt for a certified mail notice. The date of receipt of an email is the date of transmission.

2. Constructive notice shall include, but shall not be limited to, any visible signs of the initiation of construction work on a site.

3. 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 that is the subject of the decision, provided the sign remains on the property for at least ten days. Any such posting shall be the responsibility of the landowner or applicant, and verification of the posting shall be provided to the official who made the decision. Posting of signs however is not required.

C. An appeal is taken by filing a notice of appeal with the Town Clerk on the prescribed form, accompanied by the required fee. The notice of appeal shall state the grounds for the appeal, which should generally be sufficient to allow for a thorough understanding by the Board of the decision appealed.

D. The Clerk shall stamp the appeal with the date received and shall promptly transmit it to the Administrator. The Clerk shall maintain a chronological log of the appeals which are filed.

6.04.03 Once the appeal has been filed, the Administrator shall schedule a public hearing at the first available Board meeting and give public notice in accordance with Subsection 6.01.04.

A. The Administrator shall prepare a report detailing the facts relevant to the decision and shall transmit to the board all documents and exhibits constituting the record of the decision from which the appeal 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.

6.04.04 Appeal stays enforcement action.

A. An appeal of a decision of violation under Subsection 12.01.01 stays enforcement of the decision unless the Administrator who made the decision certifies to the Board after notice of appeal has been filed:

1. That because of the facts stated in an affidavit, a stay would cause imminent peril to life or property; or
2. Because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance.

B. The appellant shall be notified of the Administrator's certification.

C. Following certification, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.

D. If enforcement proceedings are not stayed, the appellant may file with the Administrator a request for an expedited hearing of the appeal.

1. The Board shall meet to hear the appeal within 15 days after such a request is filed.

E. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the 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.

F. The certification and stay procedures of this Section shall not apply with regard to the pursuit of criminal charges where appropriate.

6.04.05 Deviations from matters presented in notice of appeal. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.

6.04.06 Scope of hearing. The hearing shall be based on the record below and the scope of review shall be as follows:

A. The Board shall ensure that the rights of the appellant have not been prejudiced because the Administrator's findings, inferences, conclusions, or decisions were:

1. In violation of constitutional provisions, including those protecting procedural due process rights.
2. In excess of the statutory authority conferred upon the town by ordinance.
3. Inconsistent with applicable procedures specified by statute or ordinance.
4. Affected by other error of law.
5. Unsupported by substantial competent evidence in view of the entire record.
6. Arbitrary or capricious.

B. When the issue before the Board is whether the Administrator erred in interpreting an ordinance, the Board shall review that issue de novo. The Board shall consider the interpretation of the Administrator, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.

6.04.07 The parties to an appeal that has been made under this Section may agree to mediation or other forms of alternative dispute resolution. If all parties confirm they wish to engage in alternative dispute resolution, the Board shall adjourn the hearing to give them a reasonable opportunity to do so.

6.04.08 Decision.

A. The Board may reverse or affirm, wholly or in part, 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 the powers of the Administrator who made the decision.

B. The Board may reduce the penalty imposed if it determines:

1. That the appellant has acted in good faith; and
2. That the failure of the appellant to correct a violation is the result of circumstances beyond the appellant's control; or
3. The Board makes other findings which make the amount of the presumptive civil penalty unfair under the circumstances of the particular case.

6.04.09 Voting. The decision shall be by majority vote.
(Ord. passed 12-16-2013)

§ 6.05 APPEAL OF DECISIONS OF COMMUNITY APPEARANCE AND HISTORIC PRESERVATION COMMISSIONS.

6.05.01 The Board shall hear and decide appeals of any decision by the Community Appearance Commission allowing or denying a deviation of Article 25 Community Appearance Standards, or any decision by the Historic Preservation Commission granting or denying a Certificate of Appropriateness.

6.05.02 An appeal is initiated by a person timely filing an notice of appeal, in accordance with Article 4, accompanied by the required fee.

A. An appeal may be filed by any of the following:

1. A person who has an ownership interest in the property that is the subject of the decision being appealed.
2. A person who has a leasehold interest in the property that is the subject of the decision being appealed.
3. A person who has an interest created by easement, restriction or covenant in the property that is the subject of the decision being appealed.
4. A person who has an option or contract to purchase the property that is the subject of the decision being appealed.
5. A person who was the applicant for the decision in question.
6. Any other person who will suffer special damages as the result of the decision being appealed.

7. An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

8. The town.

B. An appeal must be taken within 30 days after decision by the Commission.

C. An appeal is taken by filing a notice of appeal with the Administrator on the prescribed form, accompanied by the required fee. The notice of appeal shall state the grounds for the appeal, which should generally be sufficient information to allow for a thorough review by the Board.

D. The Administrator shall stamp the appeal with the date received.

6.05.03 Once the application has been filed, the Administrator must schedule a public hearing at the first available Board meeting and give public notice in accordance with Section 6.01.04.

A. The Administrator shall prepare a report detailing the facts relevant to the decision and shall transmit to the board all documents and exhibits constituting the record of the decision from which the appeal is taken. The official shall also provide a copy of the record to the appellant.

6.05.04 Appeal stays Commission decision.

A. An appeal of a decision by the Community Appearance Commission allowing a deviation of Article 25 Community Appearance Standards, or a decision by the Historic Preservation Commission granting a certificate of appropriateness shall be stayed while the appeal is pending.

6.05.05 Burden of proof. The burden of proof and burden of persuasion shall be on the party appealing the decision of the Commission.

6.05.06 Scope of action. An appeal of a Commission decision shall be in the nature of certiorari. The hearing shall be based on the Commission record and the scope of review shall be as follows:

A. The Board shall uphold the decision of the Commission unless it finds the decision is:

1. In violation of constitutional provisions, including those protecting procedural due process rights.
2. In excess of the authority conferred upon the Commission by statute or ordinance.
3. Inconsistent with applicable procedures specified by statute or ordinance.
4. Affected by other error of law.
5. Unsupported by substantial competent evidence in view of the entire record.
6. Arbitrary or capricious.

B. The term "competent evidence," as used in this section, shall not preclude reliance by the Commission on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if the evidence appears to be sufficiently trustworthy and was obtained under such circumstances that it was reasonable for the Commission to rely upon it.

6.05.07 Board action.

A. The Board may reverse or affirm, wholly or in part, 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 the powers of the Commission which made the decision.

(Ord. passed 12-16-2013)

MISCELLANEOUS OTHER UDO REVISIONS TO REMOVE REFERENCES TO ETJ

§ 1.05 JURISDICTION.

1.05.01 This ordinance shall be effective throughout the town's planning jurisdiction. The town's planning jurisdiction comprises the area within the corporate boundaries of the Town of Boone and the town's extraterritorial jurisdiction (ETJ) as depicted on the official zoning map of the Town of Boone, which is incorporated by reference herein.

§ 30.01 GENERAL PROVISIONS.

30.01.01 Lands to which this article applies. This article shall apply to all special flood hazard areas within the town's jurisdiction, including extra-territorial jurisdictions (ETJs).

Article 34: Definitions

—EXTRA TERRITORIAL JURISDICTION (ETJ). The portion of the town's planning jurisdiction that lies outside the corporate limits of the town.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

TRANSPORTATION COMMITTEE REQUEST - NEW MARKET BOULEVARD IMPROVEMENTS

Craig Scheffler, chair of the Transportation Committee, presented a request on behalf of the committee for Council to consider hiring an on-call engineer for the purpose of a short-term striping plan removing the center turn lane and lowering the speed from 35 mph to 25 mph along New Market Boulevard. This request included that, following the engineer's analysis of the trial plan, Council authorize the repaving and striping of the road according to the design deemed appropriate by the engineer. It was noted that this study would cost an estimated \$49,000 to complete, but that this did not include the work to complete the redesign, only the study. Lengthy discussion ensued regarding the outcome of the community input meeting, and the safety of the pedestrians and bicyclists along this route. Town Manager John Ward noted that since this is not a budgeted project, the funds would have to come out of the Council's fund balance. Upon questioning, Police Chief Dana Crawford advised that the only wrecks which have occurred in the past year in this area were at or near the intersection of New Market Boulevard and US Hwy 421, but none had occurred on New Market Boulevard.

Upon a motion by Council Member Mason, seconded by Council Member Teague, Council moved to instruct staff to begin the process to transition this road to a lower speed limit of 25 mph with a 20 mph school zone limit extended to the Modern Ford dealership, and investigate whether or not a public hearing is required to implement this, and to defer any additional action on the committee's recommendation until it can be determined if this achieves the desired impact to make this a safer route.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Jennifer Teague, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

TRANSPORTATION COMMITTEE REQUEST - EASTBROOK/WESTBROOK IMPROVEMENTS

Public Works Director Rick Miller presented a request on behalf of the Transportation Committee for Council's consideration to approve hiring an engineering firm to do a traffic study to make recommendations for improvements to slow traffic and to make the area of Eastbrook/Westbrook safer for pedestrians and bicyclists. It was noted that this study would cost an estimated \$59,000. Mr. Miller suggested that Council allow him time to publish a request for qualifications in order to do a complete study from King Street to Hunting Road at the stop sign and include a proposal in the next budget process for Council's consideration. Council Member Mason stated she would like to see traffic calming strategies proposed that could be used in other neighborhoods throughout town as well.

Upon a motion by Council Member Mason, seconded by Council Member Teague, Council moved to instruct staff to investigate engineering options via a request for qualifications for traffic calming strategies and to bring this proposal to Council as part of the budget process.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
SECONDER:	Jennifer Teague, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

TOWN MANAGER UPDATE

Town Manager John Ward updated Council on the publishing of committee agendas and minutes through the Town's meeting portal, potential budget retreat dates, and projects reviewed by the Council of Governments.

ANNOUNCEMENT OF BOARD VACANCIES

Mayor Rennie Brantz announced current board vacancies being advertised.

APPOINTMENT TO ABC BOARD

Council Member Mason nominated Charlie Wallin to serve on this board. With no further nominations, Mayor Brantz called for a vote.

Mr. Wallin's term will expire March 31, 2020.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Mayor Pro Tem
AYES:	Mason, Clawson, Mizelle, Teague, Collins

CLOSED SESSION

ENTERING CLOSED SESSION

Upon a motion by Council Member Teague, seconded by Council Member Underdown Collins, Council moved to enter closed session at 8:06 p.m. to hear the following item:

1. Pursuant to N.C.G.S. 143-318.11(a)(3), to consult with the Town Attorney in order to preserve the attorney-client privilege between the attorney and the Town Council and consider and give instructions to the attorney concerning various potential claims involving the Town of Boone.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jennifer Teague, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

EXITING CLOSED SESSION

Upon a motion by Council Member Clawson, seconded by Council Member Mason, Council moved to exit closed session at 9 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Loretta Clawson, Council Member
SECONDER:	Lynne Mason, Mayor Pro Tem
AYES:	Mason, Clawson, Mizelle, Teague, Collins

ADJOURNMENT

MOTION TO ADJOURN

Upon a motion by Council Member Teague, seconded by Council Member Underdown Collins, Council moved to adjourn the meeting at 9:04 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Jennifer Teague, Council Member
SECONDER:	Jeannine Underdown Collins, Council Member
AYES:	Mason, Clawson, Mizelle, Teague, Collins

Christine Pope, Town Clerk

Rennie Brantz, Mayor