

**ARTICLE VIII**  
**ADMINISTRATION**

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**ARTICLE VIII**  
**ADMINISTRATION**

***8-1 GENERAL***

The Town Council shall provide for the manner in which the provisions of this Ordinance shall be determined, established, enforced, amended, supplemented, or changed. A Board within the context of this Ordinance shall mean any board, commission or agency empowered herein.

***8-2 PUBLIC HEARING AND NOTICE***

**8-2.1 Rezoning, Variance, Special Use Permit, Certificate of Appropriateness, or Watershed Waiver**

Whenever there is a request for a Zoning Map amendment, Special Use Permit, Variance, Certificate of Appropriateness in the Historic District, or Watershed Waiver involving a parcel of land, the Town Council shall conduct a public hearing. The owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land adjoining and contiguous to that parcel of land as shown on the county tax listing, shall be mailed a notice of the proposed request.

- A. Notice shall be given by first class mail at least 10 days before the public hearing to the last addresses listed for such owners on the county tax abstracts.
- B. The person or persons mailing such notices shall certify to the Town Council that proper notice has been given, and such certification shall be deemed conclusive in the absence of fraud.
- C. Notice of such proposed action shall also be published in a newspaper of general circulation in accordance with G.S. 160A-364.
- D. Each site shall be posted in a conspicuous location(s) with the time, date, and notice of public hearing.
- E. In the case of comprehensive rezoning of all property within the Town, notice shall be given as required by state law.

## **8-2.2 Text Amendment or Appeal of Interpretation**

Whenever there is a request for an action involving a text amendment to this Ordinance or an appeal of an interpretation of this Ordinance, a notice of such proposed action shall be published in a newspaper of general circulation in accordance with G.S. 160A-364.

## **8-2.3 Reconsideration of Zoning Map Amendments**

No new petition for the same change in zoning of the same property or any part thereof shall be accepted within one year from the date of filing of the last petition. However, the Town Council shall reserve the right to waive the requirement, providing that the Council determines that unusual circumstances or unnecessary hardships warrant a waiver.

## **8-2.4 Board Approval of Subdivision or Site Plans**

Whenever there is a request for an action involving a subdivision or site plan requiring approval under this Ordinance, the meeting of the designated board shall have an agenda duly posted in accordance with the North Carolina Open Meetings Statutes.

## ***8-3 ORGANIZATION***

The Town Council shall require that each of the boards provided for adopt rules and maintain records.

### **8-3.1 Rules of Conduct**

Each board shall adopt rules necessary to conduct its affairs and to establish Board organization, committees, procedures, meeting notice, and meeting conduct.

### **8-3.2 Conformance of Rules**

Such rules adopted by the board shall be in accordance with State law and the provisions of this Ordinance.

### **8-3.3 Election of Officers and Terms of Office**

Unless otherwise provided by this Ordinance, a Chairman and Vice-Chairman of the board shall be elected by members of the board to serve a term of one (1) year. The secretary does not have to be a member of the board.

### **8-3.4 Record of Meetings**

The board shall keep minutes of its proceedings showing the vote of each member upon every question, or, if absent or failing to vote, indicate such fact. The board shall also keep records of its examinations and other official actions. All such records and minutes shall be public record.

### **8-3.5 Alernate Members**

A. Inclusion of Alternate Members: The Town Council may appoint alternate members to the board to serve in the absence of any regular members.

B. Powers and Duties: Each alternate member, attending a meeting of the board and serving in the absence of a regular member, has and may exercise all the powers and duties of a regular member.

## ***8-4 PLANNING BOARD***

### **8-4.1 Authority**

The Town Council of the Town of Whitsett shall appoint a planning and zoning agency to be known as the Planning Board.

### **8-4.2 Membership**

The Planning Board shall consist of five (5) members and may have alternates, appointed by the Town Council.

### **8-4.3 Terms**

A. Length of Terms: Members and alternate members of the Planning Board shall serve a term of three (3) years, provided that upon initial appointment the terms of office may be

staggered. The terms of all Board members shall not expire at the same time.

B. Maximum Consecutive Terms: Regular members shall not serve more than two (2) consecutive full terms.

C. Filling of Vacancies: Vacancies created by resignation or other causes shall be filled as follows:

- 1) A new member or an alternate member may be appointed to fill the unexpired term of the member so vacating.
- 2) Members filling vacancies shall serve for the remainder of the unexpired term.

#### **8-4.4 Powers and Duties of the Planning Board**

The Planning Board shall have the following powers and duties:

A. To hear and make recommendations concerning matters in accordance with the terms of this Ordinance; to wit: zoning map amendments, zoning text amendments, zoning vested rights, and subdivision development.

B. To hear and make recommendations on matters pertaining to road name changes, road closings, right-of-way vacations, easement removals and right-of-way encroachments..

C. To provide recommendations to the Town Council with regard to any of the above matters, as well as those matters which remain with the Town Council as original jurisdiction such as text amendments and watershed waivers.

D. To develop a comprehensive plan for the territory under the Town's jurisdiction, subject to specific direction from the Town Council.

E. To make such other studies and plans and review such other related matters as directed by the Town Council.

F. To exercise other powers and authority provided to it by the Town Council, this Ordinance, or state law.

#### **8-4.5 Voting**

A. Required Vote for Approval: A majority vote of its members shall be required for a

Board of five (5) members to take any action.

B. Vote of the Chairman: The Board Chairman shall vote as any other member of the Board.

C. Vote Count: An absentee member, not replaced by a voting alternate shall be a positive vote for that proposal. Also, a "non-vote" by an attending member shall be considered a positive vote on the proposal being voted upon.

D. Actions by the Planning Board: With regard to proposed amendments to the zoning map, the Planning Board shall consider the proposed amendment at its next meeting following its timely submission to the Enforcement Officer. The Board shall have forty-five (45) days within which to submit its report. If the Planning Board fails to submit any comment within the forty-five day period, it shall be deemed to have made a favorable recommendation on the amendment.

## ***8-5 BOARD OF ADJUSTMENT***

### **8-5.1 Authority**

A Board of Adjustment is hereby established pursuant to NCGS 160A-338.

### **8-5.2 Membership**

A. Number of Members: The Board of Adjustment shall consist of at least five (5) members and may have alternates as appointed by the Town Council.

B. Town Council Serving as Board of Adjustment: If the Town Council chooses not to appoint members to the Board of Adjustment, it shall sit as the Board of Adjustment subject to the provisions of this Ordinance.

C. Powers and Duties

The Board of Adjustment shall have the following powers and duties:

- 1) to hear and decide appeals from and review any order, requirement, decision, determination, or interpretation made by the Town Enforcement Officer in the course of enforcing this Ordinance;
- 2) to review appeals from the proceedings of the Historic Preservation Commission

- concerning the issuance of a Certificate of Appropriateness, limited to certiorari;
- 3) to hear and decide any exceptions which are specifically delegated to it by this Ordinance;
  - 4) to determine and vary application of zoning regulations in harmony with their general purpose and intent and in accordance with general and specific rules contained therein;
  - 5) to hear and decide appeals for variances from the zoning provisions of this Ordinance in cases where special conditions would make strict and literal interpretation and enforcement of the zoning provisions of this Ordinance result in a loss of privileges shared by other properties within the same zoning district;
  - 6) to hear and decide upon requests for Special Use Permits;
  - 7) to interpret zoning maps and pass upon disputed questions of district boundary lines and similar questions that may occur in the administration of the Ordinance;
  - 8) to hear and decide all matters referred to it or upon which it is required to pass under this Ordinance; and
  - 9) to determine upon application of an owner or upon referral from the Enforcement Officer whether a proposed nonconforming use is equal or less intensive or equal than an existing, legal nonconforming use, in accordance with Section 4-11 (Nonconforming Use of Land).

### **8-5.3 Voting**

A. Required Vote for Approval: A four-fifths vote of its members shall be required for a Board of five (5) members to:

- 1) Affirm or reverse any order, wholly or partly; modify a requirement, decision, determination or interpretation; of an administrative officer charged with enforcing this Ordinance.
- 2) Decide in favor of the applicant on a matter upon which the Board is required to pass under this Ordinance.
- 3) Grant a variance from the provisions of the Ordinance.
- 4) Grant a Special Use Permit.

B. Vote of the Chairman: The Board chairman shall vote as any other Board member.

C. Delay of Decision: The Board may, in its discretion, direct that its decision be delayed to a date or time subsequent to the Board's vote on an appeal.

#### **8-5.4 Court Review**

A. Appeal to Superior Court: Each decision of the Board shall be subject to review by Superior Court in Guilford County by proceedings in the nature of certiorari.

B. Timing of Appeal

1) Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board is filed in writing with the Town Enforcement Officer; or

2) After a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Secretary or Chairman of the Board at the time of its hearing of the case, whichever is later.

#### **8-5.5 Notice of Decision**

The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail return receipt requested.

#### **8-5.6 Oaths**

The Chairman of the Board or any member temporarily acting as Chairman, shall administer oaths to witnesses in any matter coming before the Board.

#### **8-5.7 Appeals To The Board**

A. Appeal Eligibility: Any person aggrieved or any officer, department, or board within the jurisdiction of the Town Council may make an appeal.

1) Appeals shall be made within the time prescribed by the Board by filing with the officer from whom the appeal is taken and with the Board a notice of appeal, specifying the grounds thereof.



2)The officer from whom the appeal is taken shall forthwith transmit to the Board all papers constituting the record from which such action was taken.

B. Effect of Appeal: An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Boards, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of this ordinance.

C. Effect of Certification: If certification occurs in accordance with Section B. Effect of Appeal (above), proceedings may not be stayed except by a restraining order, which may be granted by a court of competent jurisdiction. Notice of the restraining order shall be given in writing to the officer from whom the appeal is taken.

D. Notice of Hearing: The Board shall fix a reasonable time for hearing the appeal, give due notice of the appeal to the parties, and decide the appeal within a reasonable time.

E. Action of Board: The Board may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination or interpretation appealed from, and shall make any order, requirement, decision, determination, or interpretation that in the Board's opinion ought to be made under the circumstances.

F. Conditions of Rehearing: The Board shall not be required to hear an appeal or application previously denied if it finds that there has been no substantial change in conditions or circumstances bearing on the appeal or application.

## **8-5.8 Variances**

A. Application: An application for a variance shall be submitted in writing to the Board by filling a copy of the application with the Enforcement Officer.

B. Procedure: The Board shall:

1)Fix a reasonable time for holding a public hearing on the variance request;

2)give notice of the variance request as prescribed in Section 8-2 (Public Hearing and Notice); and

3)decide the variance request within a reasonable time.

C. Grounds for Variance:

- 1) The Board shall make findings of fact that the requirements of Section D. Granting of Variance (below) have been met by the applicant.
- 2) The variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure.
- 3) The Board shall not, under any circumstances, grant a variance to permit a use or density not otherwise permitted by this Ordinance in the zoning district involved.
- 4) 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 shall be considered as grounds for the issuance of a variance.

D. Granting of Variance: A variance may be granted by the Board if evidence presented by the applicant persuades it to reach the following conclusions:

- 1) There are practical difficulties or unnecessary hardships that would result from in the way of carrying out the strict letter of this Ordinance. The Board may reach this conclusion if it finds that:
  - a) If the applicant complies with the provisions of this Ordinance, he can make no reasonable use of his property.
  - b) The hardship of which the applicant complains results from unique circumstances related to the applicant's property.
  - c) The hardship relates to the applicant's property, rather than personal circumstances.
  - d) The hardship is not the result of the applicant's own actions.
- 2) The variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit.
- 3) The granting of the variance assures the public safety and welfare and does substantial justice.

E. Conditions: In granting a variance, the Board may prescribe such reasonable and

appropriate conditions and safeguards as will assure that the use of the property to which the variance applies will be compatible with surrounding properties and will not alter the essential character of the neighborhood.

- 1) Violations of such conditions and safeguards, when a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance.
- 2) A variance granted subject to a condition shall be permitted only so long as there is compliance with the condition.
- 3) If a violation of a condition of a variance occurs, the Town Enforcement Officer shall notify the Guilford County Inspections Department in order that the Certificate of Occupancy may be revoked.
- 4) In the event that any such condition is held invalid, for any reason, such holding shall have the effect of invalidating the variance granted and shall render the variance null and void.

F. Duration: The variance may be issued for an indefinite duration only. Unless otherwise specified, construction or operation shall be commenced within twelve (12) months of the date of issuance of a variance, or the variance shall become void.

G. Granting of Variances:

- 1) Variances may be granted for 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 the variance is the minimum necessary to preserve the historic character and design of the structure.

### **8-5.9 Special Use Permits**

The uses indicated by an "S" in the Schedule of Permitted Uses are permitted only if a Special Use Permit is granted. The procedure for consideration and granting Special Use Permits is found in Section 4-7.

### **8-6 HISTORIC DISTRICT COMMISSION**

The Town Council of the Town of Whitsett shall appoint an Historic District Commission.

## **8-6.1 Membership**

The Historic District Commission shall be composed of at least five (5) members.

## **8-6.2 Powers and Duties**

The Historic District Commission shall have the following powers and duties:

- A. To review, analyze, and recommend to the Town Council items which pertain to existing and potential historic districts and/or individual structures, building sites, or objects designated, or to be designated, by ordinance as "landmarks" .
- B. To undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance.
- C. To recommend designation or removal of the designation of "historic district" for any area within the jurisdiction of the Town Council. Such designation or removal shall follow an investigation and a report describing the significance of structures, site features, or surroundings in the district.
- D. To review and act upon applications for Certificates of Appropriateness within historic districts established hereunder, and to grant or deny Certificate of Appropriateness in accordance with this Ordinance. The Commission may hold public hearings on the issuance or revocation of any Certificate.
- E. To recommend appropriate changes to this Ordinance which relate to an historic district or which relate to the preservation of historic structures, landmarks, or areas within the jurisdiction.
- F. To restore, preserve, and operate historic properties.
- G. To recommend to the Town Council that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark be removed for just cause.
- H. To prepare and recommend for adoption a preservation element as a part of the Town's comprehensive plan.
- I. To negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.
- J. To exercise such other powers as may be given it by law or assigned to it by the Town Council.

## **8-7 ENFORCEMENT OFFICER**

### **8-7.1 Authority**

The Town Council shall appoint an Enforcement Officer to administer and enforce the provisions of this Ordinance and to issue the permits and certificates consistent with the administrative responsibilities retained by the Town.

### **8-7.2 General Duties**

The Enforcement Officer shall:

- A. Establish and publish procedures for permits, appeals, and actions pursuant to this Ordinance, and forms implementing the same.
- B. Issue permits and certificates pursuant to this Ordinance.
- C. Review and approve all development plans and permits to assure that the permit requirements of this Ordinance have been satisfied;
- D. Interpret the applicability of the provisions of this Ordinance in matters where the text does not clearly provide guidance;
- F. Maintain all records pertaining to the provisions of this Ordinance in his office and make such records open for public inspection.
- G. Periodically inspect properties for which building permits have been issued to determine whether the use(s) is being conducted in accordance with the provisions of this Ordinance;
- H. Investigate violations of this Ordinance;
- I. Enforce the provisions of this Ordinance;
- J. Issue notice of corrective action(s) when required;
- K. Use the remedies provided in this Ordinance to gain compliance.
- L. Be authorized to gather evidence in support of said activities;

M. Receive appeals and forward cases to the appropriate body;

N. Perform other duties assigned by the Town Council.