

**ARTICLE X: ADMINISTRATION**

**DIVISION 90 BOARD OF COMMISSIONERS**

**Section 90.01 Duties and Responsibilities**

As an elected, legislative body, the Board of Commissioners performs planning and development function as authorized by various enabling provisions of the North Carolina General Statutes. The Board of Commissioners performs the following duties:

- A. Appoints the Board of Planning and Adjustment members;
- B. Upon recommendation by the Board of Planning and Adjustment, adopts, implements, and amends a comprehensive land use which establishes long-range goals and objectives regarding future development for the planning jurisdiction;
- C. Adopts, amends, and implements other specialized plans, programs, and policies for functional topics like transportation, open space, and capital improvements;
- D. By ordinance, adopts and amends regulations relating to zoning, subdivision of land, and other private development activities;
- E. Makes final decisions on subdivision plats as provided by the town's Subdivision Regulations; and,
- F. Makes final decisions concerning zoning map amendments (rezoning and text amendments) in accordance to the provisions of Article XI, Amendments.

**DIVISION 95 BOARD OF PLANNING AND ADJUSTMENT**

**Section 95.01 Establishment**

The Board of Planning and Adjustment is hereby established.

**Section 95.02 Composition and Qualification**

The Board of Planning and Adjustment shall be comprised of five members, four of whom shall be residents of the Town appointed by the Board of Commissioners, and one who resides in the extraterritorial jurisdiction of Pinetops but not in the town limits appointed by the County Board of Commissioners.

Pursuant to G.S. 160D-307 (c), all members appointed to the Planning Board from the Town's ETJ shall have equal rights (including voting rights), privileges and duties with other

members of the Board, regardless of whether the matters at issue arise within the Town or within the ETJ. The Town Board shall from time to time review this Section to confirm the existence of proportional representation based on population for residents of the Town's extraterritorial jurisdiction, pursuant to Chapter 160D-307(a).

### **Section 95.03      Term of Office and Vacancies**

- A. Members shall serve three year terms; provided however, that the initial appointment of members shall be as follows: two residents of the Town of Pinetops and one resident of the extraterritorial area shall be appointed for three year terms. Two residents of the Town of Pinetops shall be appointed for two year terms. Thereafter, all new terms shall be for three years. Any vacancy in the membership of the Board of Planning and Adjustment that occurs prior to the expiration of a term of appointment shall be filled by the appointing authority by appointing another member to serve during the unexpired term. Members of the Board of Planning and Adjustment shall continue until their terms expire and their successors are appointed. Members may be appointed for successive terms without limitation.
- B. The Town Board of Commissioners shall also appoint two alternate members to serve in the absence of regular members. One alternate member shall reside in the Town of Pinetops and one shall reside within the extraterritorial area. Both initial appointment and new terms shall be for three years, and alternate members may be reappointed. Each alternate member, while attending any regular or special meeting of the Board of Planning and Adjustment and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.
- C. Each board member shall take an oath of office before starting their duties.

### **Section 95.04      Compensation**

Members of the Board of Planning and Adjustment shall serve without pay or compensation; provided, however, the members may be reimbursed for travel and training expenses in specific connection with their role as members of the Board of Planning and Adjustment, subject to budget limitations. This provision shall not obligate the Town Board of Commissioners from a budgetary standpoint.

### **Section 95.05      Officers**

The officers of the Board of Planning and Adjustment shall consist of a Chairperson and Vice-Chairperson, elected by the members of the Board of Planning and Adjustment. Officers shall have voting privileges and obligations as members of the commission. The term of office for officers shall be one year or until their successors are elected. An officer that has served a full one year term may succeed himself/herself without limitation. In the event of the resignation or removal of an Officer, the commission members shall elect an individual from the Commission to fill the remainder of the unexpired term. Unless otherwise determined by the Commission, election of officers will normally take place during the first regular meeting in January of each calendar year. There shall be no elected secretary for the

commission; the Zoning Administrator shall serve as ex-officio secretary and in that role the Zoning Administrator shall not be considered a member of the commission.

**Section 95.06 Duties of Officers**

The Chairperson shall preside at meetings of the Board of Planning and Adjustment, decide all points of order and procedure, represent the Board of Planning and Adjustment at official functions, appoint committees to investigate and report on matters which may come before the Commission, and be responsible for carrying out policy decisions. In the absence of the Chairperson, those duties shall be vested in the Vice-Chairperson.

**Section 95.07 Records**

- A. The secretary of the Board of Planning and Adjustment shall keep a record of its resolutions, transactions, findings, determinations, recommendations, and actions. All records of the Board of Planning and Adjustment shall be public record.
- B. A summary of the subjects acted on at meetings and those members present at a meeting of the Board of Planning and Adjustment shall be written and made available to the public for inspection within no more than five business days of the adjournment of a meeting of the Board of Planning and Adjustment.
- C. The Secretary of the Board of Planning and Adjustment or designee shall cause summary minutes of the Board of Planning and Adjustment's proceedings to be kept, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact. The minutes of a meeting of the Board of Planning and Adjustment shall be completed as promptly as possible, and such records shall be open to public inspection once approved by the Board of Planning and Adjustment, but in no case later than immediately following the next regular meeting of the Board of Planning and Adjustment.

**Section 95.08 Meetings.**

All meetings of the Board of Planning and Adjustment shall be open to the public. The Board of Planning and Adjustment shall hold regular meetings unless it is notified by the Zoning Administrator that there is no business to conduct, in which case the Chairperson may cancel the regular meeting. No meeting shall be held unless forty-eight (48) hours notice thereof has been provided to each member. If special meetings are called by the Chairperson, the purpose(s) of the special meeting shall be stated and no other business may be conducted at such special meeting.

**Section 95.09 Quorum.**

A quorum shall be required to be present for the Board of Planning and Adjustment to function and decide matters that come before it. A quorum shall consist of a majority of the members of the Commission.

**Section 95.10 Rules**

The Board of Planning and Adjustment may adopt rules for the conduct of its activities as long as they do not conflict with any of the provisions of this ordinance, the Town Charter, the Town Code of Ordinances, or N.C.G.S. 160D. Such rules may establish regular meeting dates, procedures for calling special meetings, and other meeting matters. In the absence of such adopted rules, or in cases where adopted rules do not govern a given procedural question at hand, the Board of Planning and Adjustment shall follow *Robert's Rules of Order Newly Revised*, 10<sup>th</sup> Edition (or most recent edition).

**Section 95.11 Powers and Duties of the Board of Planning and Adjustment**

The Board of Planning and Adjustment shall have all those duties necessary and reasonably implied as being necessary to carry out its duties as specified in this ordinance. Said powers and duties shall specifically include without limitation, the following:

- A. To adopt and amend rules for the conduct of its activities without the need to amend this Article.
- B. To prepare or cause to be prepared a comprehensive plan or parts thereof, for the development of the town or parts thereof, which shall be subject to the approval of the Pinetops Board of Commissioners.
- C. To prepare and recommend for adoption to the local governing body with jurisdiction a plat or plats, or a corridor map or maps, showing the location of the boundary lines of existing, proposed, extended, widened or narrowed streets and linear open spaces and recreational areas, together with regulations to control the erection of buildings or other structures within such lines, within the jurisdiction or a specified portion thereof.
- D. To make, publish, and distribute maps, plans and reports and recommendations relating to the planning and development of the Town to public officials and agencies, public utility companies, civic, educational, professional, and other organizations and citizens.
- E. To prepare or cause to be prepared, and recommend for adoption by the Board of Commissioners zoning ordinances, regulations for the subdivision of land, and any other land use regulations appropriate to manage development in the Town.
- F. To administer zoning and other land use regulations in whatever role is delegated to it by the Board of Commissioners or as provided in this ordinance. The Board of Planning and Adjustment shall specifically have authority and responsibility to review and provide recommendations on applications for zoning map amendments and make final decisions regarding applications for special use approval, applications for variances, and other related applications as set forth in the Zoning Ordinance.
- G. To hear and issue decisions regarding for special use permits, administrative appeals,

variances, and such other permits as may be set forth in the Town's Code of Ordinances and Zoning Ordinance.

- H. To exercise, in general, such other powers as may be necessary to enable it to perform its functions and promote the planning of its jurisdiction.

### **Section 95.12 Training**

It is in the best interests of the citizens to strongly encourage newly appointed members of the Board of Planning and Adjustment during the course of their term of appointment to attend one or more courses of training and education on matters pertaining to the operations, activities, duties, and subject matters of Board of Planning and Adjustments. It shall be the responsibility of the Zoning Administrator to periodically notify members of the Board of Planning and Adjustment of appropriate education and training opportunities.

### **Section 95.13 Hearing Procedures for Quasi-Judicial Decisions.**

Applications for special use permits, administrative appeals, and variances require that the Board of Planning and Adjustment hold an evidentiary hearing on the application.

#### **A. Notice.**

1. Notice of the evidentiary hearing shall be given once a week for two (2) successive calendar weeks in a newspaper having general circulation in the Town. The said notice shall be published the first time not less than ten (10) days or more than twenty-five (25) days before such public quasi-judicial hearing. A sign shall be posted on the subject property in the same time frame as the notice not less than ten (10) days or more than twenty-five (25) days before such public quasi-judicial hearing.
2. Notice shall also be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing.
3. The clerk shall give due notice to the applicant of any meetings at which the application will be considered.

- B. Quasi-Judicial Nature of Hearing: All hearings by the Board of Planning and Adjustment for administrative appeals, special uses and variances shall be conducted as quasi-judicial hearings in accordance with the requirements for quasi-judicial hearings set forth in N.C.G.S. 160D.

- C. Special Use Permits Conditions. Conditions made part of a special use permit must be agreed to in writing by the applicant.
- D. Appeal. An appeal must be filed within thirty days of any board decision or administrative interpretative decision. If the notice is sent by mail, it shall be considered served after the third business day that it is sent.

#### **Section 95.14            Variances**

- A. When unnecessary hardships would result from carrying out the strict letter of the Zoning Ordinance, the Board of Planning and Adjustment shall have the power to vary or modify any of the regulations or provisions of the ordinance upon a showing of all of the following:
  - 1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - 2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
  - 3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
  - 4. 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.
- B. Conditions Imposed on Variances: No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other development regulation that regulates land use or development may provide for variances from the provisions of those ordinances consistent with the provisions of this subsection.

#### **Section 95.15            Advisory Committees.**

From time to time, the Board of Commissioners may appoint one or more individuals to assist the Board of Planning and Adjustment to carry out its planning responsibilities with respect to a particular subject area. Members of such advisory committees shall sit as non-voting members of the Board of Planning and Adjustment when such issues are being considered and lend his or her talents, energies and expertise to the Planning Board. However, all formal recommendations to the Board of Commissioners shall be made by the Board of Planning and Adjustment itself.

## **DIVISION 100: ZONING ADMINISTRATION**

### **Section 100.01 Administrative Officer**

This Ordinance shall be administered and enforced by the Zoning Administrator who shall be appointed by the Board of Commissioners and is hereby empowered:

- A. To issue a Zoning or Sign Permit prior to issuance of a building permit.
- B. To collect the designated fees in the administration of this Ordinance.
- C. To receive and process all applications for zoning amendment permits and other administrative matters as required by this Ordinance.
- D. To investigate violations of the provisions of this Ordinance and enforce actions necessary for correction thereof. To enter upon private property at reasonable times in the carrying out of the duties.
- E. Serve as staff to Board of Planning and Adjustment.
- F. To make and keep all records necessary and appropriate to the office including record of issuance and denial of all Zoning Permit, Special Use Permits, Amendments, Variances, Appeals and receipt of complaints of violations of this Ordinance and action taken on the same.
- G. To appoint agents to act on his behalf.

### **Section 100.02 Zoning, Sign, and Special Use Permits**

- A. No person shall undertake any development activity subject to this Ordinance except in accordance with and pursuant to the following permits: (1) zoning permit or sign permit issued by the Zoning Administrator, and, (2) special use permit issued by the Board of Planning and Adjustment.
- B. Zoning permits, sign permits, and special use permits are issued under this Ordinance only when a review of the application submitted, including the appropriate site plan, indicates that the proposed development will comply with the provisions of this Ordinance if completed as proposed. Such application and plans as approved, including modifications, are incorporated in any permit issued, and except as otherwise provided herein, all development shall occur strictly in accordance with such approved application and plan.
- C. Permit Exemptions
  - 1. Zoning Permit Exemptions:
    - a. Farm buildings, other than a residence or other uses listed in

Table of Uses, used for bona fide farm purposes;

- b. Any accessory building with a building dimension of 12 feet or less; and,
  - c. Facilities, appurtenances, etc., other than buildings, of a public utility, electric, gas, or telephone membership corporation.
2. Sign Permit Exemptions – No sign permit shall be required for signs specifically exempted by Section 60.04 in Article VII.

D. Application Procedures

1. All applications shall be submitted by the owner of the property or authorized agent of said owner on a form and in numbers as required by the Town. The Zoning Administrator may waive submission of required elements of information when, in his/her opinion, such information is otherwise available or is not necessary in the review of the application. Likewise, the Zoning Administrator may waive submission of a site plan if, in his/her judgment, it is determined that it is not necessary to complete the review of the permit application.
2. Each application for a Zoning Permit for a single-family or two-family dwelling on a single lot shall be accompanied by a plot plan in duplicate, drawn to scale with dimension labeled, one (1) copy of which shall be returned to the Owner upon approval. The plan shall show the following:
  - a. The shape and dimensions of the lot on which the proposed building or use is to be erected or conducted, and acreage or square footage of lot as taken from plat or deed;
  - b. The name of the owner, date prepared, scale used, tax map and parcel reference, plat book or deed book reference, address of property with township, county, and state, and north arrow for orientation;
  - c. The location of the said lot with respect to adjacent rights-of-way;
  - d. The shape, dimensions, and location of all buildings, existing and proposed, on the said lot;
  - e. The nature of the proposed use of the building or land, including the extent and location of the use, on the said lot;
  - f. Zoning district(s) within the property and on adjacent properties;
  - g. The location and dimensions of off-street parking and the means of ingress and egress to such space; and

- h. Any other information that the Zoning Administrator may deem necessary for consideration in enforcing the provisions of this Ordinance.
3. Each zoning permit application for developments other than the single-family or two-family referenced in subsection 2 above and all special use permit applications shall be accompanied with a site plan with information as required below. No new or amended plan shall be required if an adequate site plan is already on file and provided there is no change in the required off-street parking, loading, or stacking requirements. Site plans shall show proposed changes in existing natural features, existing man-made features, and existing legal features and shall show the new features. Site plans shall contain the following information, where applicable:
  - a. The plans shall include a location map that shows the location of the site in broad context to the neighborhood and major street(s).
  - b. Site plans shall be drawn to scale, using such a scale that all features required to be shown on the plans are readily discernible. Very large developments may require that plans show the development in sections to accomplish this objective without resorting to plans that are so large as to be cumbersome, or the objective may be accomplished by using different plans or plans drawn to different scales to illustrate different features. In all cases, the permit-issuing authority shall make the final determination whether the plans submitted are drawn to the appropriate scale, but the applicant for a special use permit relies in the first instance on the recommendations of the Zoning Administrator.
  - c. Development site plans should show on the first page the following information: name of owner or applicant; name of development (if any); north arrow; legend; and scale.
  - d. Development site plans shall show all existing natural, man-made, and legal features on the lot where the development is to take place, including but not limited to those listed below. In addition, the plans shall also show those features indicated below by italics that are located within fifty (50) feet in any direction of the lot where the development is to take place, and shall specify (by reference to the Table of Use or otherwise) the use made of adjoining properties.

Existing natural features:

- I. Tree line of wooded areas.
- II. Orchards or other agricultural groves by common or scientific name.
- III. Streams, ponds, drainage ditches, swamps, boundaries of

floodways, and floodplains.

- IV. Base flood elevation data, if applicable.
- V. Contour lines (shown as dotted lines) with no larger than two foot contour intervals. Proposed contour lines shall be shown as solid lines if resulting in earth movement.

Existing man-made features:

- I. Vehicle accommodation areas (including parking areas, loading areas and circulation areas, see Article VI), all designated by surface material and showing the layout of existing parking spaces and direction of travel lanes, aisles, or driveways.
- II. Streets, private roads, sidewalks, and other walkways, all designated by surface material.
- III. Curbs and gutters, curb inlets and curb cuts, and drainage grates.
- IV. Other storm water or drainage facilities, including manholes, pipes and drainage ditches.
- V. Underground utility lines, including water (including fire hydrants), sewer, electric power, telephone, gas, cable television.
- VI. Buildings, structures and signs (including dimensions of each).
- VII. Location of exterior freestanding light fixtures.
- VIII. Location of dumpsters.
- IX. Location of adjacent and opposing driveways.
- X. Use of adjacent and opposing properties.

Existing legal features:

- I. Zoning of the property, including zoning district lines where applicable.
  - II. Property lines (with dimensions identified).
  - III. Street right-of-way lines.
  - IV. Utility or other easement lines.
- E. Development Approvals. All development approvals shall be in writing and shall include a provision requiring the development to comply with all applicable State and local laws. Any development approval issued exclusively in electronic form shall be protected from further editing once issued. Applications for development approval may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement. The development approval runs with the land. Approval revocation must follow the same procedure as the approval process.
- F. Conditional Approval: If the site plan is granted conditional approval, the

applicant shall revise and resubmit the site plan. The Zoning Administrator shall review the revised site plan and, if it meets all the approval conditions and is otherwise substantially unaltered, shall signify on the plan the change from conditional approval to approval. If the site plan is not revised within 60 days to meet the approval conditions, or the applicant notifies the Zoning Administrator that he is unwilling to revise the site plan, it shall be deemed denied.

- G. Permit Issuance: The Zoning Administrator shall issue the zoning permit unless he/she finds, after reviewing the application and consulting with the applicant, that: (1) the requested use is not within his/her authority according to the Table of Uses; or (2) the application is incomplete; or (3) if completed as proposed in the application, the development will not comply with one or more of the requirements of this Ordinance. The Zoning Administrator shall issue the zoning permit unless he/she finds, after reviewing the application and consulting with the applicant, that: (1) the requested sign is not in compliance with the requirements of Article VII: Signs, or (2) the application is incomplete.
- H. Permit Issuance Authorizes Commencement of Activity: The issuance of a zoning, sign, or special use permit authorizes the recipient to commence the activity resulting in a change in use of the land, or (subject to obtaining a building permit) to commence work to construct, erect, move, or substantially alter buildings or other substantial and relevant structures. However, except in those cases (due to weather conditions or other factors beyond the control of the recipient or additional requirements are imposed or offered) where a performance bond is posted or where a development is to be constructed in phases, the intended use may not be commenced and no building may be occupied until all the requirements of this Ordinance and all additional requirements imposed pursuant to the issuance of a special use permit have been complied with.
- I. Inspections and Investigations: The Zoning Administrator shall have the right, upon presentation of proper credentials or inspection warrant (if necessary), to enter on any premises within the planning jurisdiction of the Town of Pinetops at any reasonable hour for the purposes of inspection, determination of plan compliance, or other enforcement action. The Zoning Administrator shall have the power to conduct such investigation as he/she may reasonably deem necessary to carry out his/her duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property to investigate and inspect the sites of any complaints or alleged violations of this Ordinance.
- J. The Zoning Administrator shall be responsible for making determinations. The Zoning Administrator shall provide written notices of determination by personal delivery, electronic mail or first-class mail to the property owner and party seeking determination if different from the property owner.
- K. Appeals. - Except as provided in subsection (c) of this section, appeals of decisions made by the Zoning Administrator under the Zoning Ordinance shall be made to the board of adjustment unless a different board is provided or authorized otherwise by

statute or an ordinance adopted pursuant to this Chapter. If this function of the board of adjustment is assigned to any other board pursuant to G.S. 160D-302(b), that board shall comply with all of the procedures and processes applicable to a board of adjustment for hearing appeals. Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a stormwater control regulation, or a provision of the housing code shall not be made to the board of adjustment unless set forth in this ordinance.

- (1) Standing. - Any person who has standing under G.S. 160D-1402(c) or the local government may appeal an administrative decision to the board. An appeal is taken by filing a notice of appeal with the clerk. The notice of appeal shall state the grounds for the appeal.
- (2) Judicial Challenge. - A person with standing may bring a separate and original civil action to challenge the constitutionality of an ordinance or development regulation, or whether the ordinance or development regulation is ultra vires, preempted, or otherwise in excess of statutory authority, without filing an appeal under subsection (a) of this section.
- (3) Time to Appeal. - The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D- 403(b) by first-class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.
- (4) Record of Decision. - The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (5) Stays. - An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation shall not stay the further review of an application for development approvals to use such property; in these situations, the appellant or Town may request and the board may grant a stay of a final decision of development approval applications, including building

permits affected by the issue being appealed.

- (6) Alternative Dispute Resolution. - The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The standards and procedures to facilitate and manage such voluntary alternative dispute resolution shall be as determined by the Zoning Administrator.
- (7) Appearance of Official New Issues. - The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

### **Section 100.03 Duties of Zoning Administrator, Board of Planning and Adjustment, Courts and Board of Commissioners to Matters of Appeal**

It is the intention of this Ordinance that all questions arising in connection with the enforcement of this Ordinance shall be presented first to the Zoning Administrator and that such questions shall be presented to the Board of Planning and Adjustment only on appeal from the Zoning Administrator; and that from decision of the Board of Planning and Adjustment recourse shall be to courts as provided by law. It is further the intention of this Ordinance that the duties of the Board of Commissioners in connection with the Ordinance shall not include the hearing and passing upon disputed questions that may arise in connection with the enforcement thereof, but the procedure for determining such questions shall be as herein set out in the Ordinance, and that the duties of the Board of Commissioners in connection with this Ordinance shall be only the duty of considering and passing upon any proposed amendment or repeal of the Ordinance as provided by law.

### **Section 100.04 Violations**

Any of the following shall be a violation of this Ordinance and shall be subject to the enforcement remedies and penalties provided by this Division and by State law.

#### **A. Development Without Permit**

To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this Ordinance without all required permits, certificate, or other forms of authorization as set forth in this Ordinance.

#### **B. Development Inconsistent With Permit**

To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other

form of authorization granted for such activity.

C. Violation by Act or Omission

To violate, by act or omission, any term, variance, modification, condition, or qualification placed by the Board of Commissioners or its agent boards upon any required permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereon.

D. Use in Violation

To erect, construct, reconstruct, alter, repair, convert, maintain, or use any building or structure or to use any land in violation or contravention of this Ordinance or any other regulation made under the authority conferred thereby.

E. Continue a Violation

Each day's continuance of any of the above violations is a separate and distinct offense.

**Section 100.05 Inspection and Investigation**

In order to determine violations of this Ordinance, the Zoning Administrator shall have the following rights and powers:

A. Inspections

The Zoning Administrator shall have the right upon presentation of proper credentials, or inspection warrant if necessary, to enter on any premises within the jurisdiction at any reasonable hour for the purposes of inspection, determination of plan compliance, or other enforcement action.

B. Investigations

The Zoning Administrator shall have the power to conduct such investigations as he/she may reasonably deem necessary to carry out his/her duties as prescribed in this Ordinance and, for the purpose of investigating and inspecting the sites of any complaints or alleged violations of this Ordinance.

C. Supporting Documentation

The Zoning Administrator shall have the power to require written statements, certificates, certifications, or the filing of reports with respect to pertinent questions relating to complaints or alleged violations of this Ordinance.

**Section 100.06 Enforcement Procedures**

If the Zoning Administrator finds that any of the provisions of this Ordinance are being violated, he shall notify the person responsible for such violation and property owner, if different, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or additions; alternations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violations of its provisions.

#### A. Notice of Violation

Upon determination of a violation of any section of this ordinance the penalty for which is a civil penalty, the town shall cause a notice of violation to be issued to the violator and the property owner (if different) by the appropriate official of the town and served on the violator or his agent and the property owner (if different), either in person or by first class United States mail, postage prepaid and addressed to the last known address of the violator and the property owner (if different) as contained in the records of the town or as obtained from the violator or his agent. The appropriate town official serving the notice of violation shall sign and have notarized an affidavit describing the type of service and the date of service. The violator shall be deemed to have been served upon the mailing or personal service of the notice of violation. The notice of violation can also be served by hand delivery or by posting the property on-site. The official serving the notice will certify the notice of violation to the file.

#### B. Appeal

Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of the Zoning Administrator to the Board of Planning and Adjustment within thirty (30) days following the date of the Notice of Violation. The Board of Planning and Adjustment shall hear an appeal within a reasonable time, and it may affirm, modify, or revoke the Notice of Violation. In the absence of an appeal, the decision, of the Zoning Administrator shall be final.

#### C. Notice of Decision

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

#### D. Order of Corrective Action

If upon a hearing held pursuant to an appeal as prescribed above, the Board of Planning and Adjustment shall find that the owner or occupant is in violation of this Ordinance, the Board of Planning and Adjustment shall make an order in writing to the owner or occupant affirming the violation and ordering compliance.

### **Section 100.07 Failure to Comply with Notice**

Upon failure of the violator and the property owner (if different) to comply with the notice of violation within 10 days of service, a civil citation in the amount of fifty dollars (\$50.00) shall be issued by the appropriate official of the town and served on the violator or his agent, either in person or by first class United States mail, postage prepaid and addressed to the last known address of the violator as contained in the records of the town or obtained from the violator or his agent.

### **Section 100.08 Remedies**

Any or all of the following procedures may be used to enforce the provisions of this Ordinance.

#### **A. Injunction**

Any provision of this ordinance that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement by the general court of justice. When a violation of such a provision occurs, the town may apply to the appropriate division of the general court of justice for a mandatory or prohibitory injunction and/or order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular. All inspections shall be conducted during reasonable hours upon presentation of credentials. The inspecting official must have the permission of the premises owner or an administrative search warrant to inspect areas not open to the public.

#### **B. Civil Penalties**

Any person who violates any provision of this Ordinance shall be subject to the assessment of a civil penalty under the procedures provided in Section 100.09 (Civil Penalties – Assessments and Procedures).

#### **C. Denial of Permit or Certificate**

The Zoning Administrator shall withhold or deny any permit, certificate, or other authorization on any land, building, storage, sign, or use in which there is an uncorrected violation of a provision of this Ordinance, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

#### **D. Stop Work Orders**

Whenever a building, structure, sign, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Ordinance, the Zoning Administrator may order the work to be immediately stopped. The stop work order shall be in writing and directed to the owner, occupant, or person doing the work.

The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with NCGS160D-1114.

E. Revocation of Permits or Certificate

The Zoning Administrator may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocation.

Permits or certificates shall be revoked for any substantial departure from the approved application, plans, or specifications; refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of an applicable State or local law may also be revoked.

F. Criminal Penalties

A violation of any provision shall be a misdemeanor as provided by North Carolina General Statutes 14-4.

G. State and Common Law

In addition to other enforcement provisions contained within this Division, the Board of Commissioners may exercise any and all enforcement powers granted to it by state law or common laws.

**Section 100.09          Civil Penalties – Assessment and Procedures**

A. Penalties

Any person who violates any provisions of this ordinance shall be subject to assessment of the maximum civil penalty allowed by law.

B. Notice

No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation in accordance with Section 100.06. If after receiving a notice of violation under Section 100.06, the owner or other violator fails to take corrective action, a civil penalty may be imposed under this Section in the form of a citation. The citation shall be served in the manner of a Notice of Violation. The citation shall state the nature of the violation, the civil penalty to be imposed upon the violator and shall direct the violator to pay the civil penalty within fifteen (15) days of the date of the notice.

C. Responsible Parties

The owner or occupant of any land, building, structure, sign, or use of land or part thereof and any architect, builder, contractor, agent or any other person who participates or acts in concert, assists, directs, creates, or maintains any condition

that is in violation of the requirements of this Ordinance may be held responsible for the violation and subject to the civil penalties and remedies herein provided.

D. Continuing Violation

For each day the violation is not corrected, the violator will be guilty of an additional and separate offense and subject to additional civil penalty.

E. Demand for Payment

The Zoning Administrator shall make written demand for payment upon the property owner or the person in violation, and shall set forth in detail a description of the violation for which the civil penalty has been imposed.

F. Nonpayment

If payment is not received or equitable settlement reached within thirty (30) days; after demand for payment is made, the matter shall be referred to legal counsel for institution of a civil action in the appropriate division of the General Courts of Justice for recovery of the civil penalty. Provided however, if the civil penalty is not paid within the time prescribed, the Zoning Administrator may have a criminal summons or warrant issued against the violator. Upon conviction, the violator shall be subject to any criminal penalty the court may impose pursuant to NCGS 14-4.

## **DIVISION 110 CONFLICTS OF INTEREST**

### **Section 110.01 Purpose**

Service on a board or a commission of the Town of Pinetops is a public trust. Members of governmental boards have a duty to represent the public interest fairly and honestly. To protect the integrity of governmental decisions and to promote public confidence in the decisions, no board member shall use his or her position for private gain. Further, board members shall refrain from actions that might reasonably call into question the impartiality and the fairness of those decisions. To that end this Division establishes minimum standards that board members shall follow to avoid conflicts of interest in governmental decision making. It is the intention of the governing board that this ordinance be liberally construed so as to accomplish its purpose of protecting the public against governmental decisions affected by undue conflicts of interest.

### **Section 110.02 Applicability**

- A. This action shall apply to the citizen members of all “boards” of the Town of Pinetops. For purposes of this section “boards” includes the Town Board of Commissioners and Board of Planning and Adjustment.

- B. This section shall apply to all board members serving on or after the effective date of this Ordinance.

### **Section 110.03 Participation in Decisions Affecting Personal Interests**

- A. In order to preserve public confidence in the integrity of the governmental process and to protect the constitutional rights of affected persons to an impartial decision maker, it shall be the duty of the member of every board covered by this section to avoid even the appearance of conflict of interest.
- B. Board of Commissioners. - A Board of Commissioners member shall not vote on any legislative decision regarding a development regulation adopted pursuant to N.C.G.S. 160D where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A member of the Board of Commissioners shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
- C. Appointed Boards. Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to N.C.G.S. 160D where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship. This prohibition includes formal and informal consideration of the matter by the board, whether conducted in public or in private.
- D. Administrative Staff. No staff member shall make a final decision on an administrative decision required by N.C.G.S. 160D if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under N.C.G.S. 160D unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the Town to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the Town, as determined by the Town.
- E. This provision does not prohibit participation in legislative and advisory decisions that will have a similar effect on all citizens of Pinetops or in which the financial interest is so insignificant or remote that it is unlikely to affect the member's official actions in any way.

**Section 110.04 Quasi-Judicial Decisions**

- A. A member of any board exercising quasi-judicial functions pursuant to N.C.G.S. 160D 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 violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.
- B. In order to ensure a fair and unbiased hearing on the record of all quasi-judicial matters, board members making quasi-judicial decisions shall refrain from discussion of such matters with the parties thereto other than through the formal hearing process.
- C. 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.

**Section 110.05 Legal Opinions and Disqualification**

- A. Any official covered by this section may seek an opinion from the town attorney as to the applicability of this section to a particular decision or set of facts. The response to such a request shall be made to the member making the request, and a copy shall be provided to the chair of the body to which the member belongs.
- B. By majority vote, any town board may seek the opinion of the town attorney as to the applicability of this section to a particular decision or set of facts.
- C. If an opinion is received from the town attorney that a member has an impermissible conflict of interest pursuant to this section and the member does not excuse himself or herself from participation, the board may by majority vote (not considering the vote of the member with the alleged conflict) disqualify that member from all participation in the matter involved.

**Section 110.06 Enforcement**

- A. If a member participates in a decision in violation of his division, the decision of the board shall be void, and the matter shall be reheard without the member's participation. If no objection to the members' participation has been filed with the board making the decisions within ten days of the decisions, this section shall be deemed to have been complied with.
- B. Any member who fails to make a timely filing of the financial disclosure statement required by this section or intentionally participates in a decision for which this division requires disqualification shall be guilty of a misdemeanor and shall be

subject to such penalties as provided by General Statutes 14-4

- C. Upon conviction of such offense the member shall forfeit his or her seat on the board, and the member's seat on the board shall be considered vacant as of the date of the final judgment of conviction.

**Section 110.7 Resolution of Objection.**

If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

**Section 110.08 Familial Relationship.**

For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and inlaw relationships.