

## **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 Planning Board and the Board of Adjustment members;
- B. Upon recommendation by the Planning Board, 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 PLANNING BOARD**

#### **Section 95.01 Establishment**

The Planning Board is established pursuant to the Ordinance Establishing a Planning Board. As an appointed, advisory body, the Planning Board makes recommendations to the Board of Commissioners as generally authorized by the North Carolina General Statutes and town ordinances.

#### **Section 95.02 Duties and Responsibilities**

In general, the Planning Board performs the following duties:

- A. Initiates studies to identify and analyze land use issues of importance to the town's planning jurisdiction;

- B. Prepares and recommends to the Board of Commissioners a comprehensive land use plan and other plans, programs, and policies to achieve community goals and objectives;
- C. Develops and recommends regulatory ordinances, text amendments, and administrative procedures to implement adopted land use plans and policies;
- D. Makes recommendations to the Board of Commissioners concerning requests for amendments to the text of this Ordinance and rezoning requests;
- E. Informs and advises the general public regarding planning and zoning matters through meetings, hearings, advertisements, publications, and other appropriate methods of communication;
- F. Coordinates planning activities with other jurisdictions' planning boards and commissions; and
- G. Performs any other duties assigned by the Board of Commissioners.

### **Section 95.03 Advisory Committees**

From the time to time, the Board of Commissioners may appoint one or more individuals to assist the Planning Board 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 Planning Board when such issues are being considered and lend their talents, energies, and expertise to the Planning Board. However, all formal recommendations to the Board of Commissioners shall be made by the Planning Board. Nothing in this section shall prevent the Board of Commissioners from establishing independent advisory groups, committees, or boards to make recommendations on any issue directly to the Board of Commissioners.

## **DIVISION 100 BOARD OF ADJUSTMENT**

### **Section 100.01 Establishment, hereafter referred to as the Board of Adjustment**

The Board of Adjustment is created to carry out the powers and duties as provided for in NCGS 160-A-388 as amended and to carry out the powers and duties as provided for in this Ordinance and as specified within any other Ordinances of the Town. In carrying out its function, the Board shall be bound by its adopted rules and procedures and the requirements of this Division.

### **Section 100.02 Composition, Appointment, and Terms**

The Town of Hobgood Planning Board members shall be appointed to serve as the members of the Board of Adjustments consisting of five (5) regular members. In addition, the Board of Commissioners shall appoint two (2) members to serve as alternates. All members representing the town shall be residents of the town. The terms

shall be staggered terms with each reappointment or successor serving terms of three (3) years.

### **Section 100.03 Vacancies and Compensation**

Vacancies occurring for other than expiration of term shall be filled as they occur for the remainder of the unexpired term and such vacancy shall be filled by the Board of Commissioners. Members shall serve without pay but may be reimbursed for any customary expense incurred, within a budget, while representing the Board of Adjustment.

### **Section 100.04 Attendance**

Regular attendance and interest shall be considered prerequisites of membership on the Board of Adjustment. Failure to attend three (3) consecutive meetings or four (4) meetings in any twelve (12) month period shall be considered as a resignation from the Board unless the Board determines by majority vote that good and sufficient reason has been given for the member's absence.

### **Section 100.05 Rights, Privileges, and Duties of Alternate Members**

All members of the Board shall have equal rights, privileges, and duties with all other members of the Board in all matters. Each alternate member, while attending any regular or special meeting of the Board and serving in the absence of any regular member, shall have and may exercise all of the rights, privileges, and duties of a regular member for whom he/she is substituting.

### **Section 100.06 Organization**

- A. The Board shall adopt rules of procedures governing its organization and for all proceedings before it.
- B. At the first meeting of the Board of Adjustment after the membership has been established or changed through the expiration of one or more terms, the Board shall elect a chairperson and a vice-chairperson from within its membership. The chairperson, or the vice-chairperson, shall preside at all meetings of the Board. The chairperson of the Board or the vice-chairperson is authorized in his/her official capacity to administer oaths to witnesses in any case coming before the Board.
- C. The Board shall appoint a secretary and such other officers as may be necessary. Said secretary may be an employee of the Town of Hobgood or someone designated by the Town.
- D. The Zoning Administrator or his/her designee shall serve as staff advisor to the Board.

**Section 100.07 Minutes, Written Decisions**

- A. The Board shall keep minutes of its proceedings in a book maintained for the purpose of showing the vote of each member upon each question, and, if absent or failing to vote, an indication of such fact. Final disposition of all cases shall be by written decision with the findings of fact stated, and the reasons thereof, all of which shall be a matter of public record.
- B. All written decisions or orders shall be served upon the applicant or appellant and all other persons who make a written request for a copy in accordance to the provisions of Section 100.14.
- C. Unless otherwise specified, any order or decision of the Board shall expire and become void if a building permit or certificate for such use is not obtained within two (2) years from the date of said order or decision.

**Section 100.08 Quorum**

No final action on any cases before the Board shall be taken unless a quorum is present. The quorum for Variance case hearings shall consist of five (5) members; a quorum for appeals and special use permits shall be four (4) members; and a simple majority on other matters. To secure a quorum, an alternate member may be used in the absence of a regular member. On routine administrative matters, a quorum shall consist of three (3) members

**Section 100.09 Conduct of Meetings and Hearings**

- A. All evidence and testimony shall be presented publicly and under oath, as administered by either the chair or the clerk, and the Board may consider all relevant facts within the personal knowledge of any member of the Board, but such facts should be stated publicly in the hearing. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely is guilty of a Class I misdemeanor.
- B. All meetings or hearings of the Board shall be held at a regular time and place, and at such other times and places as the Board may determine in a reasonable effort to process appeals and permit applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this ordinance.
- C. All meetings and hearings of the Board shall be open to the public. Due notice shall be given to all appropriate parties in interest and notice for hearings shall be provided as specified in Section 100.13.
- D. The Zoning Administrator shall begin each request by offering staff information regarding the request and answering any questions regarding the request or the procedure. After the Zoning Administrator's comments, person(s) speaking on behalf of the request and person(s) speaking against the request shall have the

opportunity to speak and answer the questions of the Board and the Zoning Administrator.

- E. The Board of Adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair or acting chair may be appealed to the full Board of Adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of Adjustment 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.
- F. A member of the board, regular or alternate, 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 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. 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 100.10 Voting**

- A. A 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 subsection, 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 in accordance with subsection C of this section.
- C. Other provisions affecting voting shall be provided in the Board's rules of procedures.

### **Section 100.11 Written Application and Required Information**

Every applicant for a variance and special use permit shall complete a written application provided by the Zoning Administrator. Every application for a variance or a special use permit shall contain plans that locate the development site and graphically demonstrate

existing and proposed natural, man-made, and legal features on and near the site in question. The requirements for graphic materials are:

- 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 conditional or 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:
  1. Name of Applicant
  2. Name of Development (if any)
  3. North Arrow
  4. Legend
  5. 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 Permissible Use or otherwise) the use made of adjoining properties.
  1. Existing natural features:
    - a. Tree line of wooded areas.
    - b. Orchards or other agricultural groves by common or scientific name.
    - c. Streams, ponds, drainage ditches, swamps, boundaries of floodways, and floodplains.
      - i. Base flood elevation data, if applicable.
      - ii. 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.
  2. Existing man-made features:
    - a. 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.

- b. Streets, private roads, sidewalks, and other walkways, all designated by surface material.
  - c. Curbs and gutters, curb inlets and curb cuts, and drainage grates.
  - d. Other storm water or drainage facilities, including manholes, pipes and drainage ditches.
  - e. Underground utility lines, including water, sewer, electric power, telephone, gas, cable television.
  - f. Fire hydrants.
  - g. Buildings, structures and signs (including dimensions of each).
  - h. Location of exterior light fixtures.
  - i. Location of dumpsters.
  - j. Location of adjacent and opposing driveways.
  - k. Use of adjacent and opposing properties.
3. Existing legal features:
- a. The zoning of the property, including zoning district lines where applicable.
  - b. Property lines (with dimensions identified).
  - c. Street right-of-way lines.
  - d. Utility or other easement lines.
- E. Site plans shall show proposed changes in existing natural features, existing man-made features, and existing legal features and shall show the new features.
- F. In addition to the written application and the plans, whenever the nature of the proposed development makes information or documents such as the following relevant, such information shall be provided. The following is a representative list of types of information or documents that may be requested:
- 1. Documentation confirming that the applicant has a legally sufficient interest in the property proposed for development to use it in the manner requested, or is the duly appointed agent of such a person.

2. Certifications from the appropriate agencies that proposed utility systems are or will be adequate to handle the proposed development, and that all necessary easements have been provided.
  3. Legal documentation establishing homeowners associations or other legal entities responsible for control over required common areas and facilities.
  4. Bonds, letters of credit, or other surety devices.
  5. Complete documentation justifying any requested deviation from specific requirements established by this section as presumptively satisfying design standards.
  6. Written evidence of permission to use satellite parking spaces under the control of a person other than the developer when such spaces are allowed pursuant to Article VI.
  7. Written evidence of good faith efforts to acquire satellite parking under the circumstances set forth in Article VI.
  8. Time schedules for completion of phases in staged development.
  9. The environmental impact of a development, including its effect on historically significant or ecologically fragile or important areas and its impact on pedestrian or traffic safety or congestion.
- G. With respect to all plans and other documents required by this section, the developer shall submit the number of copies (not to exceed fifteen) that the administrator deems necessary to expedite the review process and to provide necessary permanent records.

### **Section 100.12 Power and Duties of the Board of Adjustment**

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

#### **A. Appeals.**

1. An appeal from the decision of the Zoning Administrator may be taken by any person who has standing under G.S. 160A-393d or the town may appeal a decision to the Board of Adjustment. Such appeal shall be taken within thirty (30) days of the Zoning Administrator's decision by filing with the Town Clerk a written application of appeal specifying the grounds thereof. The application will include an administrative fee as established by the Board of Commissioners. The Zoning Administrator shall forthwith transmit to the Board copies of all papers constituting the record upon which the action appealed from was taken. The Board shall refuse to consider an appeal or application previously denied, if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application. The Board of Adjustment may, so long as such action is in conformity with the rest of this

Ordinance, reverse or affirm wholly or partly or may modify the order, requirement, division, or determination as it deems ought to be made.

2. An appeal of a notice violation or other enforcement order stays enforcement of the action appealed unless the Zoning Administrator who made the decision certifies to the Board of Adjustment after the notice of appeal has been filed that because of the facts stated in an affidavit, a stay would seriously interfere with enforcement of the ordinance. In such 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 Zoning Administrator a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. 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.
3. The Zoning Administrator shall give written notice to the owner of the property that is subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
4. The Zoning Administrator shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The Zoning Administrator 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. After the appeal decision and at the option of the property owner, it shall be conclusively presumed that all person 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 the 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 10 days. Any such posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.
6. The Board of Adjustment shall hear and decide the appeal within a reasonable time.
7. The Zoning Administrator shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of the

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. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the Zoning Administrator in making this decision.

8. When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).
  9. The parties to an appeal that has been made under this subsection may agree in mediation or other forms of alternative dispute resolution.
- B. Zoning Compliance Certificate with Vested Rights. To hear and decide on Zoning Compliance Certificates with Vested Rights in accordance with Article IX of this Ordinance. A written application, along with an administrative fee, shall be used to describe and apply for a vested rights determination.
- C. Variances. To authorize upon appeal in specific cases such variances from the terms of the Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, provided that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done. Such variance shall not be granted in an individual case unless and until the Board of Adjustment makes affirmative findings after the following steps:
1. A written application (including an administrative fee as established by the Board of Commissioners) is submitted demonstrating that there are unnecessary hardships resulting from carrying out the strict letter of this Ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon the showing of the following:
    - a. 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;
    - b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;
    - c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and,
    - 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.

2. A public hearing is held, with notice given pursuant to Section 100.12. A person may appear in person or by agent or attorney.
  3. The Board makes a finding that the requirements of subsection (1) of this section have been met by the applicant for a variance.
  4. The Board shall further make findings that the variance to be granted is the minimum variance and that the granting of the variance will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
  5. In granting any variance, the Board may prescribe appropriate conditions and safeguards, provided that the conditions are reasonably related to the variance and conforms to this Ordinance. Violations of such conditions and safeguards when made a part of the terms under which the variance is granted shall be deemed a violation of the Ordinance, punishable according to the provisions of Division 110.
  6. No change in permitted uses may be authorized by variance.
- D. Special use Permits. To grant in particular cases, and subject to appropriate conditions and safeguards, permits for special uses as authorized by the Table of Uses. The Board shall not grant a special use permit unless and until:
1. A written application for a special use permit is submitted indicating the section of this Ordinance under which the special use permit is sought. The application will include an administrative fee as established by the Board of Commissioners.
  2. A hearing is held, with notice given pursuant to Section 100.13. A person may appear in person or by agent or attorney.
  3. The Board finds that the circumstances of the particular application and the use of which the special use permit is sought will meet the following general standards that must be satisfied and every case involving a special use permit:
    - a. That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved,
    - b. That the use meets all required conditions and specifications,
    - c. That the use will not substantially injure the value of adjoining or abutting property, and,
    - d. That the location and character of the use, if developed according to the plan submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development for the

Town of Hobgood and its environs.

4. The Board shall apply or remind applicants of other applicable specific standards, as provided for all or certain uses, in accordance to the requirements of this ordinance.
5. The Board may place any other reasonable and appropriate conditions it deems necessary to protect the neighborhood or community on any special use permit granted.
6. If at any time after a special use permit has been issued for any special use, the Board finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a special use permit, the holder of the permit shall be notified of said violation by the Zoning Administrator along with an order to immediately terminate the use of such operation found to be in violation. The holder of said permit may appeal the order to cease the above operation to the Board of Adjustment within thirty (30) days; otherwise, the permit will be considered terminated. If a special use permit is terminated for any reason, it may be reinstated only after the steps listed above in subsections 1 through 5 of this section have been met.

### **Section 100.13 Notice of Hearing.**

The Zoning Administrator shall give notice of any hearing required by Section 100.12 as follows:

- A. Notice shall be mailed to the appellant, applicant or any other person or entity whose request is the subject of the hearing. Such notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing.
- B. Notice shall be given to neighboring property owners by mailing a written notice not later than 10 days, but not more than 25 days prior to the date of the hearing to those persons who have listed for taxation of real property and portion of which is located within six hundred (600) feet of the lot that is the subject of the application or appeal. Notice shall also be given by prominently posting signs on the property or an adjacent street or highway right-of-way that is the subject of the proposed action.
- C. Before conducting a public hearing to consider an appeal or the issuance or granting of a special use permit or a variance, notice of the hearing shall 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 as well as those owners of parcels within 600 feet of the parcel subject to the hearing with said notice being deposited in the mail at least 10 days, but not more than 25 days, prior to the hearing. In the absence of evidence to the contrary, the town will rely on the county tax listing to

determine owners of property entitled to mailed notice. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

- D. The notice required by this Section shall state the date, time, and place of the hearing, reasonably identify the property that is the subject of the application or appeal, and give a brief description of the action requested or proposed.
- E. In case of a continued hearing, a mailed notice shall be sent to the appellant or applicant and all parties to the case.

#### **Section 100.14 Quasi-Judicial Decisions**

- A. The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards.
- B. The written decision shall be signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Town Clerk, as Clerk to the Board of Commissioners.
- C. The decision of the Board shall be delivered by person 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. The person required to provide notice shall certify that proper notice has been made.

#### **Section 100.15 Appeals from the Board of Adjustment**

Every final decision of the Board of Adjustment shall be subject to review by the Superior Court of Halifax County by proceedings in the nature of certiorari. The petition for review must be filed with the Halifax County clerk of court within 30 days after the later of the following occurrences:

- A. A written copy of the Board's decision has been filed in the office of the Town Clerk; and
- B. A written copy of the Board's decision has been delivered, by personal service or certified mail, return receipt requested, or first-class mail to the applicant or appellant and every other aggrieved party who has filled a written request for such copy at the hearing of the case. When first-class mail or certified mail is used to deliver the notice, 3 days shall be added to the time to file the petition.

A copy of the writ of certiorari shall be served upon the Town of Hobgood.

**Section 110.01 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 Compliance Certificate 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 Planning Board and Board of Adjustment.
- F. To make and keep all records necessary and appropriate to the office including record of issuance and denial of all Zoning Compliance Certificate. Special Use Permits, Amendments, Variances, Appeals and of receipt of complaints of violations of this Ordinance and action taken on the same.
- G. To appoint agents to act on his behalf.

**Section 110.02 Zoning Compliance Certificates**

No land shall be used or occupied and no building hereafter structurally altered, erected, or moved, shall be used, or its use changed, until a Zoning Compliance Certificate shall have been issued by the Zoning Administrator stating that the building and/or the proposed use thereof complies with the provisions of this Ordinance. No Building Permit shall be issued and no building shall be occupied until the Compliance Certificate is issued. The issuance of a valid Zoning Compliance Certificate shall confer with it the right to undertake and complete the development and/or use of property under the terms and conditions of such Certificate provided that such action as authorized by the Certificate is commenced within one hundred eight (180) days of issuance and provided that all other permits are obtained. Otherwise the Certificate shall be void.

**A. Application Procedures**

Each application for a Zoning Compliance Certificate shall be accompanied by a 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:

1. The shape and dimensions of the lot on which the proposed building or

use is to be erected or conducted;

2. The location of the said lot with respect to adjacent rights-of-way;
3. The shape, dimensions, and location of all buildings, existing and proposed, on the said lot;
4. The nature of the proposed use of the building or land, including the extent and location of the use, on the said lot;
5. The location and dimensions of off-street parking and the means of ingress and egress to such space; and
6. Any other information that the Zoning Administrator may deem necessary for consideration in enforcing the provisions of this Ordinance.

#### B. Right of Appeal

If the Zoning Compliance Certificate is denied, the applicant may appeal the action of the Zoning Administrator to the Board of Adjustment as provided for herein. Such appeal shall be made within thirty (30) days of such permit denial.

### **Section 110.03 Duties of Zoning Administrator, Board of 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 Adjustment only on appeal from the Zoning Administrator; and that from decision of the Board of 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 110.04 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 110.05 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 110.06 Enforcement Procedures**

If the Zoning Administrator finds that any of the provisions of this Ordinance are being violated, he/she shall notify the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He/she 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

If the owner or occupant of the land, building, structure, sign or use in violation fails to take prompt corrective action, the Zoning Administrator shall give the owner or occupant written notice (by certified or registered mail to his last known address, by personal service, or by posting notice conspicuously on the property) of the following:

1. that the land, building, structure, sign or use is in violation of this Ordinance;
2. the nature of the violation, and citation of the Section(s) of this Ordinance violated; and
3. the measures necessary to remedy the violation and;
4. the right to appeal the decision of the Zoning Administrator to the Board of Adjustment within 15 days following the date of the notice of the violation.

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 Adjustment within thirty (30) days following the date of the Notice of Violation. The Board of 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 Adjustment may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

E. Order of Corrective Action

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

**Section 110.07 Failure to Comply with Notice**

If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taken, or a final decision by the Board of Adjustment following an appeal, the owner or occupant shall be subject to the penalties and remedies as set forth in Section 110.08 or to such remedies and penalties as may be provided by the State law.

### **Section 110.08 Remedies**

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

#### **A. Injunction**

Any violation of this Ordinance or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to State law.

#### **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 110.07 (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. Conditional Permit or Temporary Certificate**

The Zoning Administrator may condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties within a specified time, or the posting of a compliance security approved by appropriate governmental authority.

#### **E. 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 NCGS 160A-421.

F. 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.

G. Criminal Penalties

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

H. 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 110.09 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 110.05. If after receiving a notice of violation under Section 110.05, 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.

F. 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.

**G. 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 120 CONFLICTS OF INTEREST**

**Section 120.01 Purpose**

Service on a board or a commission of the Town of Hobgood 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 120.02 Applicability**

- A. This action shall apply to the citizen members of all “boards” of the Town of Hobgood. For purposes of this section “boards” includes the Town Board of Commissioners, Board of Adjustment, and Planning Board.
- B. This section shall apply to all board members serving on or after the effective date of this Ordinance.

**Section 120.03 Participation in Decisions Affecting Personal Interests**

- A. In order to preserve public confidence in the integrity of the governmental process, it shall be the duty of the member of every board covered by this section to avoid even the appearance of conflict of interest. Therefore no such member shall vote on, discuss debate, advocate, influence, or otherwise participate before the board on which he or she is a member in any matter that would substantially affect, directly or indirectly, his or her personal financial interests or the financial

interests of a member of his or her household. This prohibition includes formal and informal consideration of the matter by the board, whether conducted in public or in private.

- B. This provision does not prohibit participation in legislative and advisory decisions that will have a similar effect on all citizens of Hobgood 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 120.04 Quasi-Judicial Decisions**

- A. Members of boards making quasi-judicial decisions shall disqualify themselves from any matter in which their impartiality might reasonably be questioned. Members shall therefore refrain from all participation in any matter in which they have any financial interest (direct or indirect), a personal bias or prejudice, or personal or financial relationship with any of the parties or the parties' representatives.
- 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.

#### **Section 120.05 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 120.06 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.