

## **LDO AMENDMENT A.24.04; APPROVED 05-02-24; EFFECTIVE 05-02-24**

### **§ 2.3 PLANNING BOARD.**

2.3.1 Authority and establishment. The Town Planning Board is hereby established pursuant to the authority of G.S. § 160A-361.

2.3.2 Membership. The Planning Board shall consist of seven regular members, who shall consist of residents of the town appointed by the Town Council and residents of the extraterritorial jurisdiction appointed by the County Board of Commissioners proportionate to their population, as provided in G.S. § 160D-307. Two alternate members shall be appointed to the Planning Board to serve in the case of the absence or temporary disqualification of one or more regular Board members. All members shall have the same rights, privileges, and duties regardless of whether matters to be decided arise within the city or within the extraterritorial (ETJ) area.

2.3.3 Quorum. Four or more members of the Planning Board shall constitute a quorum. No action shall be taken on any matter unless a quorum of the Planning Board is present.

2.3.4 Powers and duties. In the application and enforcement of this ordinance, the Planning Board has the following powers and duties.

(A) Review and recommendation. The Planning Board has review and recommendation responsibility for the following:

- (1) Land development ordinance text amendments;
- (2) Zoning map amendments;
- (3) Conditional Zoning District classifications;
- (4) Major subdivision preliminary plats; and
- (5) Establishment of vested rights.

(B)

(B) The Planning Board is designated to perform the duties of the Board of Adjustment as outlined in 2.4 below.

2.3.5 Voting.

Required vote for recommendation of approval. The concurring affirmative vote of a majority of the members present and qualified to vote is required to make a recommendation or any other decision in favor of an applicant. Tie votes must be considered recommendations or decisions for denial.

2.3.6 Avoiding conflicts of interest. Pursuant to G.S. § 160D-109, members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to G.S. Ch. 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.

### **§ 2.4 BOARD OF ADJUSTMENT.**

2.4.1 Authority. The Town Planning Board is designated to perform the duties of a Board of Adjustment pursuant to the authority of G.S. § 160D-302. There shall be no separately appointed Board of Adjustment and any previously appointed Board of Adjustment is effectively dissolved. When the Planning Board is exercising the duties and powers of a Board of Adjustment, the Planning Board shall follow and adhere to the statutory provisions and local ordinance provisions pertaining and applicable to the Board of Adjustment. References in Section 2.4 to a Board or a Board of Adjustment shall refer to the Town Planning Board in its capacity as exercising the authority and duties of a Board of Adjustment.

2.4.2 Membership. The duties of the Board of Adjustment shall be carried out by the membership of the Town Planning Board.

2.4.3 Quorum. No hearing or action shall be taken on any matter unless a quorum of the Board is present. For all matters except the granting of a variance, a quorum shall consist of four members of the Board. A quorum for granting a variance, floodplain variance, or watershed variance shall require four-fifths of the members of the Board.

2.4.4 Powers and duties. In the application and enforcement of this ordinance, the Board of Adjustment has the following powers and duties.

(A) Final approval authority. The Board of Adjustment is the approving authority for the following:

- (1) Variances;
- (2) Watershed variances;
- (3) Floodplain variances; and
- (4) Special use permits.

(B) Appeals. The Board of Adjustment shall hear and decide on the following appeals:

- (1) Appeals of administrative decisions;
- (2) Appeals of denials for minor subdivision approval;
- (3) Appeals of denials for site plan approval;
- (4) Appeals of denials for the issuance of a land development permit;
- (5) Appeals of denials for the issuance of a stormwater management permit;
- (6) Appeals of denials for the issuance of a floodplain development permit;
- (7) Appeals of denials for recombination plat approval; and
- (8) Appeals from civil penalties authorized pursuant to G.S. § 143-215.6A imposed under Article

15.

(C) Voting. The concurring vote of four-fifths of the members of the Board shall be necessary to grant a variance, including watershed variances and floodplain variances, from the provisions of the ordinance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this section, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(G.S. § 160D-406(i))

2.4.5 Avoiding conflicts of interest. Pursuant to G.S. § 160D-109, a member of the Board of Adjustment or any other body exercising the functions of a Board of Adjustment 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. If an objection is raised to a 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.