

CHAPTER 6: PLANNING BOARD AND BOARD OF ADJUSTMENT

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Section 6.1 Authority and Duties

The Planning Board shall have the following duties and responsibilities, as authorized in NCGS 160D-301 and 302:

- A. To review requests for Major Subdivision Plans, and review and approve or deny requests for Major Site Plans.
- B. To review, hold “courtesy hearings”, and make recommendations for Special Use Permits, Vested Rights Plans, Text Amendments, Map Amendments (Standard and Conditional Zoning).
- C. To render opinions and make recommendations on all issues related to the Unified Development Ordinance, Zoning Map, Comprehensive Plan, and other land use plans which may be adopted from time to time and which require approval by the Town Council.
- D. To perform the role of the Board of Adjustment, specifically including:
 1. Hear and decide appeals from any ruling, decision, determination, or interpretation made by the Zoning Administrator pursuant to or regarding these regulations.
 2. Hear and decide petitions for variances from the requirements of the regulations of this ordinance.
 3. Change the use of, or expand certain nonconformities in accordance with Section 16.3.
 4. Serve as the Watershed Review Board and rule on all petitions in accordance with the procedures set forth in Section 7.16.
 5. Serve as the Stormwater Review Board
- E. Members of the Planning Board shall not vote on any advisory or legislative decision regarding development regulation adopted pursuant this ordinance, or any matter in its role as the Board of Adjustment, 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 Planning Board member shall not vote on any zoning amendment, appeal, variance, nonconformity expansion, or watershed petition 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 associative relationship.

Section 6.2 Membership

The Planning Board shall consist of a total of seven (7) members. The Planning Board from among its members shall annually elect a Chair and Vice-Chair.

Extraterritorial planning and development regulation areas shall be represented proportionally based on population. Representation shall be provided by appointing at least one (1) resident of the extraterritorial jurisdiction. The total membership of the Planning Board shall include a diverse geographical representation overall. Representatives from within the Town limits shall be appointed by the China Grove Town Council. Representatives from the ETJ area shall be appointed by the Rowan County Board of Commissioners. All members shall serve for overlapping terms of three (3) years.

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Section 6.3 Meetings, Hearings, and Procedures

- A. All meetings and hearings shall be open to the public and shall be conducted in accordance with the procedure set forth in these regulations and rules of procedure adopted by the Planning Board. Such rules of procedures may be amended by the Planning Board membership.
- B. Any rules of procedure adopted by the Planning Board shall be kept on file at the offices of the Zoning Administrator and shall be made available to the public at any meeting or hearing of the Planning Board.
- C. The Planning Board meeting agendas shall be arranged to clearly distinguish between and separate the items for consideration ordinarily assigned to Planning Boards consistent with NCGS 160D-301(b), and matters ordinarily assigned to Boards of Adjustment, as per NCGS 160D-302(b). The Chair shall provide an explanation as to the procedures followed by the Planning Board as it begins to consider agenda items concerning its advisory and legislative role on planning and zoning matters, and again as to the procedures followed when the agenda shifts to those quasi-judicial matters related to its role as the Board of Adjustment.
- D. The Planning Board, in performing the role of the Board of Adjustment, shall hold a public hearing on an application no later than 45 days after a complete application has been filed with the Zoning Administrator. The Board shall decide on the matter which was presented at the public hearing within 45 days of the close of the public hearing. The Chair, or in his absence the Vice-Chair, or clerk to the Board, are authorized to administer oaths to witnesses in any matter coming before the board. The Board of Adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160D-1-2,-1402 may make a written request to the chair explaining why it is necessary for certain witnesses of 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 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 parties. All meetings of the Board shall be open to the public. Conflicts of interest shall be disclosed as per NCGS 160D-109.

1. Notice of Public Hearings

The Town of China Grove shall give notice of all public hearings for Board of Adjustment proceedings. Said notice shall become a part of the record of the proceedings of the Planning Board acting as the Board of Adjustment. Notice shall be given in the following manner:

- a) Notice shall be sent by the Town by first class mail to the applicant, property owner, and the owners of all contiguous properties at least 10 days prior to the public hearing. Additionally, for Watershed Variances the Town shall also send notice of the hearing plus a description of the variance request by first class mail to the Clerk of all municipal and county governments having jurisdiction within the same watershed and to any entity using the water supply from that watershed for consumption purposes at least ten 10 days but no more than 25 days prior to the public hearing. The notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur.
- b) Within the same time period the Town shall conspicuously post a notice of hearing sign.

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2. Decisions

- a) The concurrent vote of four-fifths (4/5) of the voting members of the Planning Board acting as the Board of Adjustment 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 certiorati. A vacant or disqualified seat shall not be used in determining the vote. This provision does not include absences of members. In all matters coming before the Planning Board acting as the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.
- b) 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 will be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. 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 clerk to the board or such other office or official as ordinance specifies. The decision of the Board shall be sent by personal delivery, electronic mail, or first-class mail to the applicant, property owner, or anyone who has submitted a request for copy prior to the date the decision becomes effective.
- c) Upon the denial of an original application, or upon the denial of an application from which a rehearing has been conducted, a similar application may not be filed for a period of one (1) year after the date of denial of the original application.

Section 6.4 Staff

The Zoning Administrator or his/her designee shall serve as staff to the Planning Board in either of its roles, and shall provide technical assistance to the Board as requested.