

CHAPTER 16: PLANNING BOARD

SECTION 16.1: AUTHORITY AND RESPONSIBILITY

The Planning Board shall have the following duties and responsibilities:

- To render opinions and make recommendations on all issues and petitions related to the Land Development Code, Zoning Map, Land Use Plan, and other plans which may be adopted from time to time which require approval by the Town of Cornelius Board of Commissioners.
- To make recommendations on any amendments as allowed by Chapter 18, Text/Rezoning Amendments.
- To make an interpretation of any portion of this Ordinance.
- To serve as the Board of Adjustment and conduct evidentiary quasi-judicial hearings as follows:
 1. To hear and decide appeals from any order, decision, determination, or interpretation made by the Zoning Administrator pursuant to or regarding these regulations.
 2. To hear and decide petitions for variances from the requirements of these regulations.
 3. To hear and decide petitions for Special Use Permits.
 4. To hear and decide petitions for Major Architectural Variations.
- To serve as the Watershed Review Board and rule on all petitions in accordance with the procedures set forth in Chapter 11, Watershed Protection Administration.

SECTION 16.2: MEMBERSHIP

In accordance with G.S. 160D-301, the Planning Board shall consist of a total of seven (7) members.

The representation on the Planning Board shall be proportional based on population for residents of the extraterritorial area under the authority of this Code. Representation shall be provided by appointing at least one (1) resident of the entire extraterritorial jurisdiction (ETJ). The total membership of the Planning Board shall be proportional to the population of residents of the Town and residents in the ETJ area.

Representatives from within the Town limits shall be appointed by the Cornelius Board of Commissioners. Representatives from the ETJ area shall be appointed by the Mecklenburg County Board of Commissioners.

SECTION 16.3: MEETINGS, HEARINGS & PROCEDURES

- A. All meetings and evidentiary 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 Planning Director and shall be made available to the public at any meeting or hearing of the Planning Board.

SECTION 16.4: STAFF

The Planning Director or designee shall serve as staff to the Planning Board and shall provide technical assistance to the Planning Board as requested.



CHAPTER 16: PLANNING BOARD

SECTION 16.5: BOARD OF ADJUSTMENT

The Planning Board acts as the Board of Adjustment when conducting evidentiary quasi-judicial hearings.

16.5.1: Quasi-Judicial Procedures

Board Member Participation. A member of the Board 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 and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

Notice. In accordance with G.S. 160D-406, Notice of evidentiary hearings conducted pursuant to this Chapter 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; and to any other persons entitled to receive notice as provided by the local development regulation. 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. Within that same time period, the local government 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.

Administrative Materials. The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.

Presentation of Evidence. The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

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 the notice of appeal. If any party or the Town would be unduly prejudiced by the



CHAPTER 16: PLANNING BOARD

presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board 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 official who made the decision.

Oaths. The Chair of the Board or any member acting as Chair and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while **under** oath during a proceeding before the Board, willfully swears falsely is guilty of a Class 1 misdemeanor.

Subpoenas. The Board 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, the applicant, the local government, and any persons with standing under G. S. 160D-1402 (c) 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 may be appealed to the full Board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board 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.

Appeals in Nature of Certiorari. When hearing an appeal pursuant to G.S. 160D-947(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. 160D-1402(k).

Voting. The 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 under G.S. 160D-109(d) 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.

Decisions. The Board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board 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 official who made the decision. 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 and be approved by the board and 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 the development regulation specifies. The decision of the Board shall be delivered within a reasonable time by personal 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.



CHAPTER 16: PLANNING BOARD

If an application is denied, the reason(s) for denial shall be provided to the applicant in writing. Unless the Board of Adjustment explicitly states conditions that must be met prior to the resubmission of an application, the applicant may file a new application and associated fee for the same property after one (1) year of the date of denial unless the application is significantly different from the previously denied application. All applications shall be resubmitted for full review beginning with Section 12.5 (unless the application is resubmitted to address conditions set forth by the Board of Adjustment for re-application).

Judicial Review. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G. S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d).

16.5.2: Appeals of Administrative Decisions

When hearing an appeal, the board 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 official who made the decision.

The Board of Adjustment shall hear and decide appeals, decisions of administrative officials charged with enforcement of the Land Development Code, and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

Except as provided by G.S. 160D-1403.1, any party with standing under G.S. 160D-1402(c) may appeal decisions by the zoning administrator to the Board of Adjustment. An appeal is taken by filing a Notice of Appeal with the Town Clerk. The Notice of Appeal shall state the grounds for the appeal.

The official who made the decision shall give written notice to the owner of the property that is the 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. If notice of the decision is sent by mail, it is deemed received on the third business day after it is sent. (G.S. 160D-405(c)).

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.

An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from 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 ordinance. 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 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



CHAPTER 16: PLANNING BOARD

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.

The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolutions.

16.5.3: Variances

- A. Filing a Variance Petition — A petition for variance, in the form prescribed by the Board, shall be filed with the Town Planning Director or designated administrator, accompanied by a nonrefundable filing fee as established by the Town Board.
- B. Standards for Granting a Variance – When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment may vary any of the 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 is not 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
 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 is not 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.
- C. 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 ordinance that regulates land use or development may provide for variances from the provisions of those ordinances consistent with the provisions of this subsection.
- D. The concurring vote of four-fifths of the board shall be necessary to grant a variance.

16.5.4: Special Use Permits

Filing a Special Use Permit Application — A Special Use Permit application, in the form prescribed by the Board, shall be filed with the Town Planning Director or designated administrator, accompanied by a nonrefundable filing fee as established by the Town Board.

Standards for approving a Special Use Permit – The Board may approve a special use permit application if, following an evidentiary quasi-judicial public hearing, the proposed use in its proposed location meets the following Findings of Fact:



CHAPTER 16: PLANNING BOARD

1. Complies with all applicable standards of this Code;
2. Is in the interest of the public convenience and will not have a significant adverse impact on the general welfare of the neighborhood or community;
3. Is compatible with the character of the surrounding area in terms of site planning, building scale, and project design;
4. Is compatible with the character of the surrounding area in terms of operating characteristics, such as hours of operation, outdoor lighting, noise, and traffic generation; and
5. Will not have a significant adverse impact on pedestrian safety or comfort.

The Board may take the following actions on a Special Use Permit Application:

- Approve
- Approve with Conditions
- Deny

Lapse of Approval – An approved special use permit will lapse and have no further effect two (2) years after its effective date unless:

1. A building permit has been issued and construction diligently pursued; or
2. A certificate of occupancy has been issued; or
3. The building or use is established; or
4. The Board of Adjustment extends the expiration period by no more than one year.

A special use permit will lapse upon revocation of a building permit for violations of conditions of approval.

Amendments to Special Use Permits. Major Amendments to Special Use Permits shall be reviewed by the Board of Adjustment in accordance with the standards specified above. Minor Amendments to Special Use Permits shall follow the Conditional Zoning administrative process specified in Section 18.5.12, Alterations and Amendments to Approvals.

16.5.5: Effect of Approval or Modification of Decision

After the Board of Adjustment approves a variance, Special Use Permit, or Major Architectural Variation, or reverses or modifies an order, decision, determination, or interpretation of an administrative officer, the appellant or petitioner shall be responsible for a building permit and/or certificate of occupancy, as applicable, in order to proceed with the development of the subject property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the variance, special use permit, major architectural variation, reversal, or modification granted to the appellant or petitioner by the Board.

16.5.6: Rehearing

The Board shall refuse to hear an appeal, variance, special use permit, or major architectural variation petition which has been previously denied unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

