

## **ARTICLE 3. ADMINISTRATIVE MECHANISMS**

### **PART I. ADMINISTRATOR**

#### **Section 3-1. Administrator**

- (A) The Administrator and/or designated agent is hereby authorized to enforce and interpret the provisions of this Ordinance. This official shall have the right to enter upon the premises at any reasonable time necessary to carry out his/her duties. It is the intention of this Ordinance that all questions arising in connection with enforcement and interpretation shall be presented first to the Administrator and/or designated agent. Appeal from his decision may be made to the Board of Adjustments.
  
- (B) In administering the provisions of this Ordinance, the Administrator and/or designated agent shall:
  - (1) Make and maintain records of all applications for permits and requests listed herein, and records of all permits issued or denied, with notations of all special conditions or modifications involved.
  - (2) File and safely keep copies of all plans submitted, and the same shall form a part of the records of his office and shall be available for inspection at reasonable times by any interested party.
  - (3) Transmit to the appropriate board or commission and the Board of Adjustments all applications and plans for which their review and approval is required.
  - (4) Conduct scheduled inspections of premises with valid cause or complaint and, upon finding that any of the provisions of this ordinance are being violated, notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it.

### **PART II. PLANNING BOARD**

#### **Section 3-2. Authority**

The Planning Board of the Town, also known as the Planning and Zoning Board, is created pursuant to NC General Statutes 160-361 and shall hereafter be referred to as the Board.

#### **Section 3-3. Purpose**

The Board shall act in an advisory capacity to the Board of Commissioners in the matter of guiding and accomplishing a coordinated and harmonious development of the area within the Town's jurisdiction.

#### **Section 3-4. Membership**

- (A) The Board shall consist of seven members. Six shall be residents of the town and shall be appointed by the Board of Commissioners. These six members shall hold office initially, as follows: Three members for a term of three years and three members for a term of two

years. Thereafter, all six members shall serve three-year terms. Vacancies occurring for reasons other than expiration of term shall be filled by the Board of Commissioners as they occur for the period of the unexpired term. Members may be removed from office by the Board of Commissioners for neglect of duty, failure to attend three consecutive meetings, misconduct, or failure to attend 75% of the meetings. A written statement of the reasons for removal shall be filed with the Town Clerk at the time of removal.

- (B) The remaining member shall be a resident of Brunswick County who resides outside the town but within the extraterritorial jurisdiction of the town and shall be appointed by the Brunswick County Board of Commissioners. This member shall serve a three-year term of office. If a vacancy in this position occurs for reasons other than expiration of term, it shall be filled by the County Board of Commissioners for the period of the unexpired term. Members may be removed from office for reasons previously cited. However, if such were to occur, a written statement of the reasons for removal shall be requested from the County Board of Commissioners by the Town Board of Commissioners at the time of removal.

### **Section 3-5. Jurisdiction and Voting**

The member appointed by the County Board of Commissioners shall have equal rights, privileges and duties with the other members of the Board in all matters pertaining to the regulation of both the extraterritorial area and the areas within the corporate limits. Four members of the Board shall constitute a quorum for the taking of any action on any matters.

### **Section 3-6. Operational Procedures**

- (A) The Board shall elect a Chairperson and create and fill such other offices as it may deem necessary.
- (B) The term of the Chairperson and other offices shall be one year, with eligibility for reelection.
- (C) Proceedings of the Board shall be conducted in accord with Chapter 31 of the General Code of Ordinances.
- (D) A record shall be maintained of its members' attendance and of its resolutions, discussions, findings and recommendations which shall be a public record.
- (E) The Board shall hold at least one meeting monthly, and all of its meetings shall be open to the public.
- (F) There shall be a quorum of four members.
- (G) The vote of a majority of those members present shall be sufficient to decide matters before the Board, provided a quorum is present. All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section 3-7(B).
- (H) Special meetings may be called by the Chairperson. It shall be the duty of the Chairperson to call such a meeting upon a recommendation of the Board. During a special meeting, no other business may be considered except that which was specified by advanced notice.

The Clerk shall notify all members of the Board in writing not less than five days in advance of such special meeting. Notice of time, place, and subject of such meeting shall be published in a newspaper having general circulation in the Town of Calabash when possible in accordance with NC General Statutes 143-128.12(b).

- (I) The petitioner or applicant who is on the agenda may withdraw the petition or application at anytime; but if a motion is pending to make a recommendation to grant or deny, such motion shall have precedence.
- (J) The Board shall render its decisions in the form of a recommendation on any properly filed petition or application within 60 days after its first planning board meeting following submittal and shall transmit a signed copy of the decision to the Administrator to submit to the Board of Commissioners for consideration. The 60 day time period will not begin until the petitioner has furnished the Administrator with all required permits. The decision shall be in the form of a letter signed by the Chairperson and Clerk and attached to the minutes. Such letter shall indicate the reasons for the Board's determination and its findings.

### **Section 3-7. Rules of Conduct**

Members of the Board may be removed for cause, including violation of any rule stated below:

- (A) Faithful attendance at all meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite of continuing membership on the Board. Absence from four regularly scheduled Board meetings during any one calendar year shall be considered cause for a recommendation to the Board of Commissioners of dismissal from the Board.
- (B) No Board member shall take part in the hearing, consideration, or determination, of any application in which he/she is reasonably likely to have a direct, substantial, and readily identifiable personal or financial impact with regard to the outcome. Personally interested is defined to mean that a Board member or a Board member's family either owns, has financial interest in, or has property abutting property being considered by the Board.
- (C) No Board member shall discuss any case with any parties thereto prior to the meeting on that case; provided however, that members may receive and/or seek information pertaining to the case from any other member of the Board, or staff prior to the meeting. Board members shall disclose publicly any contact made by any party to a matter before the Board.
- (D) Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto prior to the Board's determination of that case. Violation of this rule shall be cause for dismissal from the Board.
- (E) Members shall serve at the pleasure of the Board of Commissioners.

### **Section 3-8. General Powers**

- (A) The general powers and duties of the Board are:
  - (1) To make studies of the area within its jurisdiction.

- (2) To determine objectives to be sought in the development of the study area.
  - (3) To prepare and adopt plans for achieving these objectives.
  - (4) To prepare and from time to time amend and revise a comprehensive and coordinated plan for the physical, social, and economic development of the area.
  - (5) To prepare and recommend ordinances promoting orderly development along lines indicated in the Comprehensive Plan and advise concerning proposed amendments of such ordinances.
  - (6) To determine whether proposed developments conform to the principles and requirements of the Comprehensive Plan for the growth and improvement of the area and ordinances adopted in furtherance of such plan.
  - (7) To keep the Board of Commissioners and the general public informed and advised as to these matters.
  - (8) Review and comment on proposed zoning text and/or map amendments.
  - (9) To perform any other duties that may lawfully be assigned to it.
- (B) In order to effectively carry out its powers and duties, the Board is empowered to:
- (1) Gather statistics on past trends and present conditions with respect to population, property values, the economic base of the area, and land use; and such other information as is important or likely to be important in determining the amount, direction, and kind of development within the Town's jurisdiction and its various parts.
  - (2) With prior approval by the Board of Commissioners, make, cause to be made, or obtain special studies on the location, the condition, and the adequacy of specific facilities, which may include but are not limited to studies of housing; commercial and industrial facilities; recreation area; public facilities; and traffic and parking facilities.
  - (3) May develop internal subcommittees dedicated to participate in areas of study, ordinance development or for any other specific purpose within the Board's jurisdiction. Such committees shall be responsible to the Planning and Zoning Board and shall be advisory in nature.

### **Section 3-9. Miscellaneous Powers and Duties**

- (A) The Board shall have the authority to promote public interest in the understanding of its recommendations, plans, reports, and other materials. To achieve these objectives, the Board may:
- (1) With prior approval of the Board of Commissioners, publish and distribute copies of materials and may employ other means of publicity and education as it deems necessary.

- (2) Authorize its members, members of such committees as it may appoint, to attend planning conferences, meetings of planning institutes or hearings upon pending planning legislation.
  - (3) By resolution, agree to reimburse, within the limits of the Board's budget and authority, its members and members of committees it may appoint, for reasonable expenses incurred in connection with the performance of their official duties. All reimbursements must be signed by the Chairperson of the Planning Board and countersigned by a member of the Finance Committee of the Board of Commissioners. The Board shall maintain a documentation of all such expenditures.
- (B) The Planning Board may conduct such public hearings as may be required to gather information necessary for the drafting, establishment, and maintenance of the plans. Before recommending any such plans to the Board of Commissioners, the Planning Board may hold at least one public hearing thereon.

### **Section 3-10. Staff and Finances**

- (A) In order to carry out its duties set forth herein, the Board may request that the Board of Commissioners:
- (1) Enter into and carry out the terms of contracts with the state and federal governments or any agencies thereof under which financial or other planning assistance is made available to the Town and may agree to comply with any reasonable conditions that are imposed upon such assistance.
  - (2) Enter into and carry out the terms of contracts with any other town, county or regional council or planning agency under which it agrees to pay the other local unit of government or planning agency for technical planning assistance.
  - (3) Contract with Town planners, engineers, architects, and other consultants for such planning related services it may require.
- (B) Expenditures of the Board shall be within the amounts appropriated for that purpose. The Town shall not be liable for indebtedness incurred by the Board unless an appropriation is made by the Board of Commissioners for such purpose as is necessary to perform the duties specified herein in accordance with NC General Statutes 160A, Article 19, Part 1.

### **Section 3-11. Comprehensive Plan**

- (A) The comprehensive plans, with the accompanying maps, plats, charts, and descriptive matter, shall be and show the Board's recommendations to the Board of Commissioners for the development of the area, including, among other things, the general location, character, and extent of streets, bridges, boulevards, parkways, playgrounds, squares, parks, aviation fields, and other public ways, grounds, and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, power, gas, sanitation, transportation, communication, and other purposes; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of any of the foregoing ways, buildings, grounds, open spaces, properties, utilities, or terminals.

- (B) The comprehensive plans and any ordinances or other measures to effectuate the plans shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the Town and its environs which will, in accordance with present and future needs, best promote health, safety, and the general welfare, as well as efficiency and economy in the process of development; including, among other things, adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities, services, and other public requirements.
- (C) In conformance with NC General Statutes 160A-383, all zoning regulations shall be made in accordance with Town plans. Planning Board review of zoning amendments shall require written comments on the consistency of the proposed amendment with the comprehensive plan and any other relevant plans (such as a small area plan, a corridor plan, or a transportation plan) that have been adopted by the governing board. However, a statement from the Planning Board that the proposed amendment is inconsistent with a plan does not preclude the governing board from adopting the amendment. The governing board is also required to adopt a statement on plan consistency before adopting or rejecting any zoning amendment. This statement must also explain why the board believes the action taken is reasonable and in the public interest. The statement adopted by the governing board on plan consistency is not subject to judicial review.

### **Section 3-12. Zoning Amendments**

The Board may initiate, from time to time, proposals for amendment of the Zoning Code and Map, based upon its studies and plans. In addition, it shall review and make recommendations to the Board of Commissioners concerning all proposed amendments to the Zoning Code and Map.

### **Section 3-13. Subdivision Regulations**

- (A) The Board shall review, from time to time, the existing regulations for the control of land subdivision in the area and submit to the Board of Commissioners its recommendations, if any, for the revision of these regulations.
- (B) The Board shall review and make recommendations to the Board of Commissioners concerning all proposed plats of land subdivision.

### **Section 3-14. Public Facilities**

The Board shall review with the Town officials and report its recommendations to the Board of Commissioners upon the extent, location, and design of all public structures and facilities, on the acquisition and disposal of public properties, on the establishment of building lines, mapped street lines, and proposals to change existing street lines. However, whether or not there is a recommendation from the Board, the Board of Commissioners may, if it deems wise, take final action on any such matter at any time.

### **Section 3-15. Annual Report**

The Board shall, in April of each year, submit in writing to the Board of Commissioners a written report of its activities, and an analysis of the expenditures to date for the current fiscal year, and shall

submit to the Board of Commissioners for budget consideration its requested budget of funds needed for operation during the ensuing fiscal year.

### **PART III. BOARD OF ADJUSTMENT**

#### **Section 3-16. Establishment**

- (A) Membership. The Board of Adjustment shall consist of five members and three alternates. Alternate members may serve in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Four of the five members and four of the alternates shall be residents of the Town and shall be appointed by the Board of Commissioners. One of the members and one alternate shall be appointed by the County Board of Commissioners and shall be residents of the extraterritorial jurisdiction (ETJ). All members of the Board, and alternates (while sitting in the absence of a member) shall have equal voting rights in all matters being considered by the Board. Members of the Board and alternates serving at the time of adoption of this Ordinance shall continue in office until such time as the terms of their office expire or action is taken to remove as described in subsection (D). Vacancies occurring for reasons other than expiration of terms shall be filled by the Board of Commissioners; in the case of ETJ members and ETJ alternates, by the County Board of Commissioners, as such may occur and for the period of the unexpired term.
- (B) Alternate Members. Alternate members appointed by the Board of Commissioners will serve in the absence of members appointed by the Board of Commissioners. An alternate member appointed by the County Board of Commissioners will only serve in the absence of the regular ETJ member.
- (C) Length of Term. Three members and one alternate appointed by the Board of Commissioners shall have terms of three years. The remaining members, one member and three alternates, shall have terms of two years. ETJ member and alternate shall serve as such may be prescribed by the County Board of Commissioners (one member three years and one alternate two years).
- (D) Conditions. All members wishing to sit on the Board of Adjustment shall attend a scheduled seminar on the Statutory Powers and Duties of the Zoning Board of Adjustment prior to appointment to the Board of Adjustment.

#### **Section 3-17. Procedure**

- (A) Officers. The Board of Adjustment shall elect a Chairperson and a Vice Chairperson from its membership and such other officers as the Board deems best.
- (B) Meetings. The Board shall adopt rules and bylaws in accordance with the provisions of this Ordinance and of Article 19, Chapter 160A of the General Statutes of North Carolina. All meetings of the Board shall be scheduled at a regular place and time and shall be open to the public. The Chairman shall have the authority to call a special meeting if he deems such a meeting to be necessary. The Chairman, or in his absence, the Vice-Chairman, may administer oaths and compel the attendance of witnesses by subpoena. The Board shall make findings of fact and conclusions of law in each proceeding brought before it. The Board shall also keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, a record of such fact; and the final

disposition of appeals shall be recorded by resolution indicating the reasons of the Board thereof, all of which shall be a public record. No final action shall be taken on any matter without the concurring vote of four-fifths of the members of the Board.

- (C) Appeals. An appeal from the decision of the Administrator may be taken to the Board of Adjustment by any person, firm or corporation aggrieved, or by any officer, department, board, or bureau of the Town. Such appeal shall be taken within 45 days after the decision by the Administrator, by filing with Administrator and with the Board a notice of appeal, specifying the grounds thereof. The Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. The Board of Adjustment shall fix a reasonable time for hearing of the appeal, giving notice to all participants by registered mail. An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrator certifies to the Board, after notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property, or that because the violation charge is transitory in nature, a stay would seriously interfere with the enforcement of this Ordinance or any other applicable ordinance of the Town, in which case, proceedings shall not be stayed other than by a restraining order, which may be granted by the Board or by a court of record to whom an appeal has been made. In all cases where the Board of Adjustment rules in favor of the appellant the Board of Adjustment application fee shall be refunded. (See Article 10)
- (D) Duties. It is the intent of this Article that all questions of interpretation and enforcement shall first be presented to the Administrator or his authorized representative, and that such questions shall be presented to the Board of Adjustment only on any appeal from the decision of the Administrator or his authorized representative, and that recourses from the decision of the Board of Adjustment shall be to the courts as provided by law, and any and all other duties and powers prescribed by statutes.

### **Section 3-18. Power and Duties**

- (A) Administrative Review. To hear and decide appeals where it is alleged there is error in any order, requirements, decision, or determination made by the Administrator in the enforcement of this Ordinance. A concurring vote of four-fifths of the members of the Board shall be necessary to reverse, wholly or partly, any such decision. 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.
- (B) A simple majority of regular members may conduct a meeting when NO variances or interpretations are going to be heard. As required by NC General Statutes 160A-381(c), when deciding conditional-use permits quasi-judicial proceedings shall be used. No vote greater than a majority vote shall be required. 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.
- (C) No change in permitted uses may be authorized by variance. (See Article 10)
- (D) Variances. To authorize upon appeal in specific cases variances from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions,

a literal enforcement of the provisions of this Ordinance would result in undue hardship, so that the spirit of this Ordinance shall be observed and substantial justice done.

- (1) A charge shall be made to the appellant according to Town policy in order to cover administrative and advertising costs as set forth in Section 1-10.
  - (2) In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Ordinance. A variance from the terms of this Ordinance shall not be granted by the Board unless and until the following findings are made:
    - (a) That special condition and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other land, structures, or buildings in the same district;
    - (b) That literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
    - (c) That the special conditions and circumstances do not result from the actions of the applicant;
    - (d) That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other land, structures, or buildings in the same district.
  - (3) In considering all proposed variances from this Ordinance, the Board shall, before making any finding in a specified case, first determine that the proposed variance will not constitute any change in the zone shown on the zoning map and will not impair an adequate supply of light and air to adjacent property, or materially increase the public danger of fire and safety, or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, morals, and general welfare.
  - (4) No permitted use of land in other districts shall be considered grounds for the issuance of a variance. Under no circumstances shall the Board of Adjustment grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or expressly or by implication prohibited by the terms of this Ordinance in the district.
  - (5) In granting a variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this Ordinance.
  - (6) Violation of such conditions and safeguards when made a part of the terms under which the variance is granted, shall be deemed a violation of this Ordinance and punishable as specified in Article 7.
- (E) Administration of Oaths. The Chairman or any member temporarily acting as chairman is authorized to administer oaths to witnesses in any matter coming before the Board. All testimony before the Board must be under oath and recorded.

- (F) 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 conflicts 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.

### **Section 3-19. Appeals from the Board**

Appeals to the Superior Court may be taken by any person, firm, or corporation aggrieved, or by any officer, department, board, or bureau of the Town affected by any decision of the Board of Adjustment, provided such appeals shall be taken within 30 days after the decision of the Administrator, or after a written copy thereof is delivered to the applicant, whichever is later. The decision of the Board shall be delivered to the applicant either by personal service, or by registered mail, or by certified mail, return receipt requested.

## **PART IV. BOARD OF COMMISSIONERS**

### **Section 3-20. Powers and Duties**

- (A) The Board of Commissioners, in considering conditional-use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Article 12 of this Ordinance.
- (B) In considering proposed changes in the text of this Ordinance or in the zoning map, the Board of Commissioners acts in its legislative capacity and must proceed in accordance with the requirements of Article 5.
- (C) Unless otherwise specifically provided in this Ordinance, in acting upon conditional-use permit requests or in considering amendments to this Ordinance or the zoning map, the Board of Commissioners shall follow the regular voting and other requirements as set forth in other provisions of the Town code.
- (D) A Board of Commissioner member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.