



## **PLANNING BOARD AGENDA**

### ***Members:***

***Chairman: Mark Lane (ETJ)***

***Vice-Chairman: Debbie Howard (Town)***

***Doris Wallace (Town)***

***Ashley Spain (ETJ)***

***Bryan Stanley (Town)***

***Alisa Bizzell (Town)***

***Wiley Narron (Alternate)***

***Stephen Wensman, AICP, ALA, Planning Director***

***Mark Helmer, AICP, CZO, Senior Planner***

***Julie Edmonds, Administrative Assistant***

***Meeting Date: Thursday, September 1, 2022***

***Meeting Time: 6:00 p.m.***

***Meeting Place: Council Chambers, Smithfield Town Hall***

# PLANNING BOARD

## REGULAR MEETING AGENDA SEPTEMBER 1, 2022 MEETING TIME: 6:00 PM TOWN HALL COUNCIL CHAMBERS

**Call to Order.**

**Pledge of Allegiance.**

**Identify voting members.**

**Approval of the agenda.**

**Approval of the minutes for August 4, 2022.**

**New Business.**

**Recognition of Chairman Steve Upton for his 15 years of dedicated service to the citizens of the Town of Smithfield.**

**ZA-22-02 Town of Smithfield:** The applicant is requesting an amendment to Unified Development Ordinances, Section 3.3.3.1, Composition and Vacancies to reduce the Board of Adjustment size from 7 regular members to 5 regular members and to amend Section 3.4.2.2 and section 3.5.4 to allow no more than 3 absences per calendar year for both the Planning Board and Board of Adjustment members.  
**Coates' Cannons NC Local Government Law;**

- a. Planning Board Basics - Staff Presentation
- b. Decision Types and Site-Specific Approvals - Institute of Government Internet Presentation
- c. Considerations for Legislative Development Decisions - Staff Presentation

**Further Reading in Urban Design;**

Sidewalks, A Livability Fact Sheet

**Old Business.**

**Public Comment.**

**Adjournment.**

**Draft  
Town of Smithfield  
Planning Board Minutes  
Thursday, August 4th, 2022  
Town Hall Council Chambers  
6:05 PM**

Members Present:

Chairman Stephen Upton  
Vice-Chairman Mark Lane  
Ashley Spain  
Debbie Howard  
Doris Wallace  
Brian Stanley  
Wiley Narron

Members Absent:

Alisa Bizzell

Staff Present:

Mark Helmer, Senior Planner  
Julie Edmonds, Administrative Support Specialist

Staff Absent:

Stephen Wensman, Planning Director

**CALL TO ORDER**

**SWEARING IN OF NEW BOARD MEMBERS**

**APPROVAL OF MINUTES FOR July 14th, 2022**

Debbie Howard made a motion to approve the minutes, seconded by Doris Wallace. Unanimously approved.

**NEW BUSINESS**

**SUP-22-02 Home2 Suites:**

The applicant is requesting a special use permit for the construction of a five-story hotel that exceeds 40 feet in height. The project considered for approval is located on a 2.26-acre tract of land within a B-3 (Business) zoning district. The property is located on Towne Centre Place approximately 850 feet southeast of its intersection with East Market Street and further identified as Johnston County Tax ID# 15L11001H.

Mark Helmer stated that the applicant, Wintergreen Hospitality is requesting a special use permit to exceed the 40' height limitation in the B-3 zoning district. The hotel would be approximately 70-foot tall. The property considered for the special use permit is located on Towne Centre Place approximately 600 feet south of its intersection with East Market Street. The developer is proposing a Homes 2 Suites hotel on the 2.26-acre property. The hotel will provide required parking, landscaping and dumpster screening in accordance with the UDO. The requested building height is typical of other hotels in the area and creates no offsite issues.

## FINDINGS OF FACT

4.9.4.5.1. The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, or general welfare. **The project will not be detrimental to or endanger the public health, safety or general welfare. The additional height is typical for hotels in the B-3 district. The Fire Marshall has reviewed the application and has no concerns. Therefore, staff believes the special use will not be a deterrent to the public, health, safety or welfare.**

4.9.4.5.2. The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district. **The project will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.**

4.9.4.5.3. Adequate utilities, drainage, parking, or necessary facilities have been or are being provided. The development will provide adequate utilities, drainage, parking and necessary facilities. **The development will have adequate utilities, drainage, parking and necessary facilities.**

4.9.4.5.4. The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke, or gas. **The use will not create such nuisances.**

4.9.4.5.5. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets. Proper ingress and egress will be provided. **Adequate ingress and egress will be provided as required.**

4.9.4.5.6. That the use will not adversely affect the use or any physical attribute of adjoining or abutting property. **The use will have no adverse impacts on the abutting or adjoining properties.**

4.9.4.5.7. That the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located. **The proposed hotel is adjacent to another hotel and nearby retail and it will be in harmony with the area.**

4.9.4.5.8. The special use shall, in all other respects, conform to all the applicable regulations of the district in which it is located. **The proposed project will be in UDO requirements.**

Mark Lane suggested the UDO be amended to allow for additional height without having to go through the special use permit process.

## VOTING OF NEW CHAIRMAN & VICE-CHAIRMAN

Stephen Upton nominated Mark Lane as Chairman, seconded by Debbie Howard. All members voted unanimously in favor.

Stephen Upton nominated Debbie Howard as vice-chairman, seconded by Mark Lane. All members voted unanimously in favor.

Stephen Upton announced his resignation as chairman of the Planning Board effective August 5<sup>th</sup>, 2022.

**OLD BUSINESS:** None

**Adjournment**

Being no further business, Stephen Upton made a motion seconded by Ashley Spain to adjourn the meeting. Unanimously approved.

Respectfully Submitted,

A handwritten signature in black ink that reads "Julie Edmonds". The signature is written in a cursive, flowing style.

Julie Edmonds  
Administrative Support Specialist



# Request for Planning Board Action

Agenda  
Item: ZA-22-02  
Date: 09/01/22

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**Subject:** Board member attendance  
**Department:** Planning Department  
**Presented by:** Mark Helmer, Senior Planner  
**Presentation:** Business Item

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## Issue Statement

Staff requests the Planning Board review the draft UDO Amendment amending the ordinances pertaining to the required number of Board of Adjustment members and attendance regulations for all town boards.

## Financial Impact

None

## Action Needed

The Planning Board should review and discuss the proposed amendment and make a recommendation to the Town Council.

## Recommendation

Planning Staff recommends the Planning Board recommend approval of the zoning text amendment ZA-22-2 with a statement declaring the request consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest.

Approved:  Town Manager  Town Attorney

## Attachments:

1. Staff report
2. Proposed ordinance.
3. Consistency Statement
4. Application



# Staff Report

Agenda  
Item: ZA-22-02

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## OVERVIEW:

Over the past couple of years, there has been vacancies and absences on Town boards making it difficult to conduct the business of the town. This amendment addresses this issue by:

1. Reducing the required number of Board of Adjustment members, and
2. By creating reasonable and consistent attendance regulations across all boards.

## ANALYSIS:

**Attendance on Boards.** The Unified Development Ordinance (UDO) Article 3 addresses Board authority and regulations including Board meeting attendance. Between the three official boards, Planning Board, Board of Adjustment and Historic Properties Commission, the regulations on attendance differ:

- For Planning Board, **Section 3.3.3. Composition and Vacancies** states, ... "Faithful attendance of the meetings of the Planning Board is considered a prerequisite for the maintenance of membership on the Planning Board. Failure to attend three (3) consecutive meetings shall be deemed adequate reason for termination of membership on the Planning Board by the Town Council."
- For Board of Adjustments, **Section 3.4.2.2. Membership and Vacancies** lacks any language about Board of Adjustment attendance.
- For Historic Preservation Commission, **Section 3.5.4. Attendance at Meetings** states, "Any member of the commission who misses more than three (3) consecutive regular meetings or more than four (4) meetings in a calendar year shall lose his or her status as a member and shall be replaced or reappointed by the Town Council...."

For all three boards to function regular attendance is critical. At times, attendance has been an issue. Staff also believes there should be a consistency between the boards for meeting attendance and that failure to attend a total of three meetings per calendar year should be deemed adequate reason for termination of membership. The draft ordinance reflects these changes.

**Board of Adjustment Composition.** The Board of Adjustments is a board that meets infrequently and only when needed to address a zoning interpretation or variance petition. As a result, citizens tend to be less interested in servicing on the board and there are consistently vacancies on the board. To facilitate a full complement of board members when a meeting is called, Staff is suggesting a reduction to the required number of board members from 7 to 4, eliminating 1 in-town and 1 Extra-Territorial Jurisdiction (ETJ) member.

**CONSISTENCY STATEMENT (STAFF OPINION):**

Staff finds the zoning text amendment as proposed consistency with the Town of Smithfield Comprehensive Growth Management Plan and other adopted plans, and that the amendment is reasonable and in the public interest.

**RECOMMENDATION:**

Planning Staff recommends the Planning Board recommend approval of the zoning text amendment ZA-22-2 with a statement declaring the request consistent with the Town of Smithfield Comprehensive Growth Management Plan and that the request is reasonable and in the public interest.

**STAFF RECOMMENDED MOTION:**

“move to recommend approval of zoning text amendment, ZA-22-02, finding the amendment consistent with the Town of Smithfield Comprehensive Growth Management Plan and other adopted plans, and that the amendment is reasonable and in the public interest.”



**THE TOWN OF SMITHFIELD  
UNIFIED DEVELOPMENT ORDINANCE  
AMENDMENT CONSISTENCY STATEMENT  
BY THE SMITHFIELD PLANNING BOARD  
ZA-22-02**

**Whereas** the Smithfield Planning Board, upon acting on a zoning ordinance amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to approve a statement describing how the action is consistent with the Town of Smithfield *Comprehensive Growth Management Plan*; and

**Whereas** the Smithfield Planning Board, upon acting on a zoning ordinance amendment to the *Unified Development Ordinance* and pursuant to NCGS §160A-383, is required to provide a brief statement indicating how the action is reasonable and in the public interest.

**NOW THEREFORE, BE IT ADOPTED BY THE SMITHFIELD PLANNING BOARD AS APPROPRIATE:**

**IN THE EVENT THAT THE MOTION TO RECOMMEND APPROVAL OF THE ORDINANCE AMENDMENT,**

That the final action regarding zoning ordinance amendment ZA-22-02 is based upon review of and consistency with, the Town of Smithfield *Comprehensive Growth Management Plan* and any other officially adopted plan that is applicable, along with additional agenda information provided to the Planning Board and information provided at the regularly scheduled meeting of Planning Board; and

It is the objective of the Town of Smithfield Planning Board to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The zoning ordinance amendment promotes this by offering fair and reasonable regulations for the citizens and business community of the Town of Smithfield as supported by the staff report and attachments provided to the Planning Board at their regularly scheduled meeting. Therefore, the ordinance amendment is reasonable and in the public interest.

**IN THE EVENT THAT THE MOTION TO RECOMMEND APPROVAL OF THE ORDINANCE FAILS,**

That the final action regarding zoning ordinance amendment ZA-22-02 is based upon review of, and consistency, the Town of Smithfield *Comprehensive Growth Management Plan* and other officially adopted plans that are applicable; and

It is the objective of the Planning Board to have the *Unified Development Ordinance* promote regulatory efficiency and consistency and the health, safety, and general welfare of the community. The zoning ordinance amendment does not promote this and therefore is neither reasonable nor in the public interest.

**DRAFT ORDINANCE # ZA-22-02**  
**AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD**  
**UNIFIED DEVELOPMENT ORDINANCE**  
**ARTICLE 3 PERTAINING TO THE BOARD OF ADJUSTMENT MEMBERSHIP AND**  
**ATTENDANCE REQUIREMENTS FOR ALL TOWN BOARDS**

**WHEREAS**, the Smithfield Town Council wishes to amend certain provisions in the Unified Development Ordinance by making changes to the Town of Smithfield Unified Development Ordinance to reduce the number of Board of Adjustment membership by 1 in-Town and 1-ETJ member and to provide reasonable and consistent board attendance regulations for all Town boards. re

**WHEREAS**, it is the objective of the Smithfield Town Council to have the UDO promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

**NOW, THEREFORE**, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

**PART 1**

[Revise Article 3, Section 3.3.3.1. COMPOSITION AND VACANCIES, amending the section and creating a new subsection 3.3.3.2 ATTENDANCE AT MEETINGS with 3 absences per year as the reasonable number of absences for the Planning Board]

**3.3.3.1. *Composition and Vacancies.*** The Planning Board....

~~Faithful attendance of the meetings of the Planning Board is considered a prerequisite for the maintenance of membership on the Planning Board. Failure to attend three (3) consecutive meetings shall be deemed adequate reason for termination of membership on the Planning Board by the Town Council.~~

**3.3.3.2. *Attendance at Meetings.*** Faithful attendance of the meetings of the Planning Board is considered a prerequisite for the maintenance of membership on the Board. Failure to attend three (3) meeting per calendar year shall be deemed adequate reason for termination of membership on the board by the Town Council. Absence due to sickness, death in the family or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the board, except that in the event of a long illness or any other such cause for prolonged absence, the member shall be replaced.

**PART 2**

[Revise Article 3, Section 3.4.2.2 MEMBERSHIP AND VACANCIES. To reduce the number of in-town and ETJ members by 1 each in order to better keep a full membership of the board. Also, create a new subsection 3.4.2.3 ATTENDANCE AT MEETINGS with 3 absences per year as the reasonable number of absences for the Board of Adjustment]

**3.4.2.2. Membership and Vacancies.** The Board of Adjustment shall consist of five (5) ~~seven (7)~~ regular members and two (2) alternate members. Four (4) ~~Five (5)~~ members and one (1) alternate member shall be citizens and residents of the town and shall be appointed by the Smithfield Town Council. One (1) member ~~Two (2) members~~ and one (1) alternate member shall be citizens and residents of the extraterritorial jurisdiction surrounding the Town of Smithfield, as described pursuant to NCGS 160D-307 and shall be appointed by the Board of County Commissioners of Johnston County....”

**3.4.2.3. Attendance at Meetings.** Faithful attendance of the meetings of the Board of Adjustment is considered a prerequisite for the maintenance of membership on the board. Failure to attend three (3) meeting per calendar year shall be deemed adequate reason for termination of membership on the board by the Town Council. Absence due to sickness, death in the family or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the board, except that in the event of a long illness or any other such cause for prolonged absence, the member shall be replaced.

### **PART 3**

[Revise Article 3, Section 3.5.4 Attendance at Meetings. with 3 absences per year as the reasonable number of absences for the Historic Preservation Commission]

**3.5.4. Attendance at Meetings.** Faithful attendance of the meetings of the Historic Preservation Commission is considered a prerequisite for the maintenance of membership on the commission. Failure to attend three (3) meeting per calendar year shall be deemed adequate reason for termination of membership on the commission by the Town Council. Any member of the commission who misses more than three (3) consecutive regular meetings or more than four (4) meetings in a calendar year shall lose his or her status as a member and shall be replaced or reappointed by the Town Council. The council shall act within sixty (60) days to fill vacancies on the commission. Absence due to sickness, death in the family or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the commission, except that in the event of a long illness or any other such cause for prolonged absence, the member shall be replaced.

### **PART 4**

That the Unified Development Ordinance shall be page numbered and revision dated as necessary to accommodate these changes.

### **PART 5**

That these amendments of the Unified Development Ordinance shall become effective upon adoption.

Duly adopted this the \_\_\_\_\_ day of October 2022.

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M. Andy Moore, Mayor

ATTEST

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Shannan L. Parrish, Town Clerk

DRAFT



Town of Smithfield  
Planning Department  
350 E. Market St Smithfield, NC 27577  
P.O. Box 761, Smithfield, NC 27577  
Phone: 919-934-2116  
Fax: 919-934-1134

**Petition for Amendment to the Unified Development Ordinance**

*Pursuant to Article 4 of the Town of Smithfield Unified Development Ordinance, Proposed amendments may be initiated by the Town Council, Planning Board, Board of Adjustment, members of the public, or by one or more interested parties. The application for any amendment shall contain a description of the proposed zoning regulation.*

**APPLICANT INFORMATION:**

Town of Smithfield  
Petitioner's Name  
Smithfield, NC 27577  
City, State, Zip Code

350 E Market St  
Address or PO Box  
919-934-2116, ext 1114  
Telephone

Proposed amendment to the Town of Smithfield Unified Development Ordinance:  
Amend Article 3 to create uniform and reasonable attendance regulations  
**and Amend the BOA membership regulations.**

(Attach additional sheets as necessary)

This application must be accompanied by a Statement of Justification which addresses the following:

- 1. How the amendment proposed would serve the public interest or correct an obvious error in the existing ordinance.
- 2. How the amendment proposed will enhance or promote the purposes and goals of the adopted plans and policies of the governing body.

The undersigned hereby authorizes the filing of this petition and certifies that the information contained herein stands alone based on the merits of this request and is accurate to the best of their knowledge and belief.

  
Signature of Petitioner

8/3/22  
Date

**FOR OFFICE USE ONLY**

File Number: \_\_\_\_\_ Date Received: \_\_\_\_\_ Amount Paid: \_\_\_\_\_



## PLANNING DEPARTMENT

Mark E. Helmer, AICP  
Senior Planner

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### **Notice of Public Meeting**

Notice is hereby given that a public meeting will be held before the Planning Board of the Town of Smithfield, N.C., on Thursday, September 1, 2022 at 6:00 P.M., in the Town Hall Council Chambers located at 350 East Market Street to consider the following request:

**ZA-22-02 Town of Smithfield:** The applicant is requesting an amendment to Unified Development Ordinances, Section 3.3.3.1, Composition and Vacancies to reduce the Board of Adjustment size from 7 regular members to 5 regular members and to amend Section 3.4.2.2 and section 3.5.4 to allow no more than 3 absences per calendar year for both the Planning Board and Board of Adjustment members.

All interested persons are encouraged to attend. To accommodate disabilities and to comply with ADA regulations, please contact the town office if you need assistance. Further inquiries regarding this matter may be directed to the Smithfield Planning Department at (919) 934-2116 or online at [www.smithfield-nc.com](http://www.smithfield-nc.com).

Run Legal ad in the Johnstonian on August 17 and August 24, 2022.



## Coates' Canons NC Local Government Law

### Planning Board Basics

**Published: 01/07/22**

**Author Name: Adam Lovelady**

So, you're a new member of the planning board. Or maybe you have been on the board for a while and need a refresher on your role. First off, thank you for your service to the community and congratulations on the honor. Now, what have you gotten yourself into? This blog outlines the basic state requirements and options for planning boards.

The local planning board may take many forms and perform many roles. The core responsibilities are clearly set forth by state law. The General Statutes also grant fairly wide-ranging authority for additional responsibilities, giving local governments the ability to use the planning board in a variety of ways. Local ordinances, policies, and procedures may refine or adjust some of the provisions discussed here. Check with your local government planner and/or local government attorney to find out any special rules and provisions that may apply to the planning board in your community.

### Balancing Interests

First up, consider the role of the planning board: to advise the governing board on the community's future. Such a broad and weighty role demands strong and thoughtful planning board members. You can and should bring your personal experience, professional knowledge, and passion for your community to your work as a planning board member. Even so, it is imperative that you approach the work with a community-focused perspective. You are making recommendations and decisions for the whole community; you are not making recommendations and decisions for your own interests or the interests of your friends and business partners.

This demands that you address many big issues and balance many competing interests: individual benefits and community impacts, neighborhood preferences and broader necessities, property value increases and housing affordability, short-term gain and long-term resilience, infrastructure capacity and desire for development. As is the case for the governing board when they make a final decision on a legislative development matter, for the planning board there are some Considerations for Legislative Development Decisions that *should* be considered and some Impermissible Considerations for Legislative Development Decisions that *must not* be considered when making recommendations and decisions on zoning amendments and other legislative development decisions.

It is also true that land use planning and development regulations are just pieces of the much larger puzzle of a thriving community. There are many governmental factors that interrelate to planning, such as transportation, education, parks and recreation, social services, and more. Additionally, there are many factors beyond the scope of the planning board. Next, let's consider the duties and responsibilities of the planning board.

## **Duties and Responsibilities**

***Advise on Comprehensive and Land Use Planning.*** Under G.S. 160D-301, planning boards are authorized “[t]o prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.” This general authority is emphasized by the relatively recent requirement that in order to enforce zoning, a local government must have a reasonably maintained comprehensive plan or land use plan. Such plans are adopted by the governing board “with the advice and consultation of the planning board,” following the standard legislative process outlined at G.S. 160D.601. For more on the planning requirements, check out this blog on Comprehensive Plans and Land Use Plans Required for Zoning.

***Advise on Initial Zoning.*** Before a local government exercises the powers of zoning, it must designate a planning board (G.S. 160D-604(a)). The planning board prepares and/or reviews and recommends the proposed zoning regulation. The governing board may not hold hearings or take action on the initial zoning ordinance until the planning board has provided written recommendation regarding adoption.

***Advise on Zoning Amendments and Plan Consistency.*** Proposed amendments to the zoning ordinance—text amendments or rezonings—must be submitted to the planning board for review and comment. As described in G.S. 160D-604(b), the planning board gets at least 30 days to review and comment. In carrying out its task of reviewing proposed amendments, the planning board is not required by state law



to hold formal public hearings, but many local governments do require hearings by ordinance. If after 30 days of referral the planning board has not provided a written report, then the governing board may take action without planning board recommendation.

When the planning board reviews proposed amendments to the zoning ordinance, “the planning board shall advise and comment on whether the proposed action is consistent with any comprehensive or land-use plan that has been adopted and any other officially adopted plan that is applicable.” The planning board may also review and comment on “other matters as deemed appropriate by the planning board” (160D-604(d)).

A planning board recommendation is advisory, not binding. Even if the planning board determines that a proposed zoning amendment is inconsistent with the comprehensive plan, that does not preclude governing board action and adoption of the amendment. For more on the procedures, take a look at this blog on [Procedures for Legislative Development Decisions](#).

***Advise on Other Ordinances.*** The planning board *must* have an opportunity to review and comment on zoning adoption and amendment; the planning board *may* have an opportunity to review and comment on adoption and amendment of other development ordinances under Chapter 160D. So, adoption of and amendments to the subdivision ordinance, minimum housing code, historic preservation ordinance, and other development regulations may be referred to the planning board for review and comment (G.S. 160D-604(c)). If the local ordinance calls for such referral to the planning board, then that procedural requirement is mandatory for local decision-making.

***Additional Planning Duties.*** In addition to the above duties, the General Statutes grant planning boards broad authority for planning and plan implementation. As outlined at G.S. 160D-301(b), the local government may assign the planning board the following powers and duties:

- To prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.
- To facilitate and coordinate citizen engagement and participation in the planning process.
- To develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
- To advise the governing board concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604.
- To exercise any functions in the administration and enforcement of various means for carrying out plans that the governing board may direct.
- To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.
- To perform any other related duties that the governing board may direct.

Some jurisdictions elect to grant all of the above powers to planning boards while others do not. Your local code of ordinances should identify which of the above powers have been granted to the planning board.

## **Additional Decision-Making**

The planning board may be tasked with decision-making for certain development approvals and may be tasked with the duties (decision-making and all) of certain appointed boards. For planning boards tasked with handling different types of decisions, it is especially important to understand the substantive and procedural differences between those decisions, as outlined in the blog on [Types of Development Decisions](#).

A planning board may provide final decisions on preliminary and final subdivision plats (G.S. 160D-803).

Planning boards may handle certain quasi-judicial decisions such as applications for special use permits (G.S. 160D-705). The planning board may perform some or all of the duties of a board of adjustment, if designated as such by the local governing board (G.S. 160D-302). So, some planning boards handle variance decisions, appeals of administrative zoning decisions, and appeals from the historic preservation commission. For each of these—special use permits, variances, appeals—the planning board is serving as a quasi-judicial board and must follow the procedural formalities for such decisions. This is a notable contrast from the advisory decisions that the board typically makes.

Additionally, as noted in the list of duties above, the planning board may “provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.” This role of *preliminary forum* for quasi-judicial decisions is peculiar. It may serve as a sort-of dress rehearsal for the eventual evidentiary hearing. But, the ultimate decision-making board cannot base its decision on the forum or a recommendation from the forum. The planning board also may perform the duties of a historic preservation commission, if designated by the governing board (G.S. 160D-303). When serving as a preservation commission, the planning board must have at least three members with special interest, experience, or education in history, architecture, or related fields. Preservation commission duties include, among other things, quasi-judicial determinations for certificates of appropriateness for construction and alterations in a historic district. Finally, the North Carolina Urban Redevelopment Law outlines specific additional roles for planning boards, referenced in the law as “planning commissions” (G.S. 160-500 et seq.). First, the planning board must certify areas as “redevelopment areas.” The local redevelopment commission then may craft a redevelopment plan. The planning board reviews and certifies a recommendation on that redevelopment plan before it is finalized and sent to the governing board (G.S. 160A-513).

## **Organization and Composition**

As outlined at G.S. 160D-301, the statutes are flexible with regard to composition of the planning board. A planning board must have at least three members, but otherwise the size, composition, and organization are open to the local governing board’s discretion. As an alternative to establishing a planning board, a local government may assign the duties of the planning board to another board and local governments may create a joint planning board under Article 20 of Chapter 160A. While the governing board may take on the duties of some appointed boards, the governing board may not handle the planning board’s review and comment duties outlined at G.S. 160D-604. That must be performed by a planning board or another board separate from the governing board (160D-604(e)).

There are no specific qualification requirements for planning board members, except in cases where the planning board acts as a historic preservation commission (described above). The governing board may set procedures for soliciting, reviewing, and making appointments to the planning board (G.S. 160D-310). For municipalities that have extraterritorial planning jurisdiction, the planning board must include proportional representation for the extraterritorial area (G.S. 160D-307). Unless prohibited by charter

or ordinance, a governing board may appoint nonresidents to serve on the planning board (GS 160A-60 & 153A-25). Terms for planning board members may be set by local ordinance, or members may serve for indefinite periods at the pleasure of the governing board.

As with any appointed board under Chapter 160D, members of the planning board must take an oath of office pursuant to G.S. 153A-26 and 160A-61 (G.S. 160D-309).

A local government may provide compensation to planning board members (G.S. 160D-301 & -502).

## **Rules of Procedure**

Any board needs up-to-date and thorough rules of procedure to operate most effectively. G.S. 160D-308 provides that the local governing board may adopt rules for procedure for the planning board, and if the governing board does not adopt rules of procedure, then the planning board may do so. The adopted rules of procedure must be maintained by the local government clerk (or other designated official) and must be posted to the local government website, if one exists.

## **Conclusion**

The planning board has an important role for land use planning and development regulations in North Carolina communities. This blog has outlined some of the duties and responsibilities, organization and composition, and other considerations for planning boards and planning board members.

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## Coates' Canons NC Local Government Law

### Considerations for Legislative Development Decisions

**Published: 10/07/21**

**Author Name: Adam Lovelady**

A property owner has requested for the local government to rezone her property to allow for significant new development. This could bring substantial new investments, business, and residents. But it could also change the character of the place, burden public infrastructure, and alter neighborhood demographics. Should the local government approve the rezoning?

In general, legislative decisions such as zoning map amendments are left to the discretion of the governing board. Local elected officials may take in public opinion, technical analysis, and political judgment about what is in the best interest of the community. Some considerations are good and even required—planning board recommendation and comprehensive plan consistency, for example. Other considerations are off limits. Governing board members must not base decisions on the race, ethnicity, or religion of the applicant, landowner, or future tenants of the property.

This blog outlines those good and necessary considerations for legislative development decisions. A [separate blog](#) highlights the topics that are out of bounds.

Note that while some of these rules and concepts apply to other types of decisions, this discussion is focused on *legislative* development decisions. For an explanation of the types of development decisions, check out this [blog](#).

### General Considerations

A proposal to rezone property or amend the zoning ordinance raises many important and appropriate issues and concerns. What are the land use impacts of this development for the individual property owner? The neighboring property owners? The broader community? The local government? If approved, what will this mean for economic development and environmental impacts, property rights and social equity, infrastructure and opportunity, and the community's vision for its future. Each of these are legitimate considerations for legislative zoning amendments.

## **Statutory Purposes and Considerations**

General Statute 160D-701 sets forth the statutory purposes authorizing land use zoning regulation. To start, zoning regulations “shall be made in accordance with a comprehensive plan and shall be designed to promote the public health, safety, and general welfare.” The state law expands on that broad notion to set forth additional public purposes for zoning: to prevent overcrowding, to reduce congestion in the streets, to provide safety from fire and dangers and to ensure efficient and adequate public facilities and services. Under the authorizing state law, zoning regulations must be made with reasonable consideration of the following, among other things:

- “the character of the district and its peculiar suitability for particular uses”
- “a view to conserving the value of buildings”
- “and encouraging the most appropriate use of land”

## **Consideration of the Comprehensive Plan**

A comprehensive or land use plan is a vision for the community based on careful analysis of existing conditions, robust community engagement, and strategic prioritization by the local government leaders. Under G.S. 160D-501, North Carolina local government must have a comprehensive plan or land use plan that is reasonably up-to-date as a condition of having and enforcing zoning. It is appropriate—even required—for the governing board to consider the applicable plans when it considers an amendment to the development regulations. If there is a request to rezone land on the edge of town for a medium-density residential development, how does that align with the policies and priorities identified by the community in the comprehensive plan? Is the site identified for infrastructure investment and residential development? Or, is the area identified to be maintained for low-density, agricultural uses? The community's adopted vision should be considered when deciding about amendments to the development regulations.

For amendments to the zoning regulations, state law requires consideration of the comprehensive or land use plan. G.S. 160D-605 requires that the governing board must approve a statement describing whether and how an action is consistent or inconsistent with the applicable plan. While the comprehensive plan or land use plan is not binding—the governing board may adopt a rezoning even if that action is inconsistent with the applicable plans. But, there is a procedural requirement to consider the applicable plans in the process. While consideration of the comprehensive plan is not required under state law for other legislative actions, such consideration is still appropriate and recommended for other legislative development matters such as adoption or amendment of the subdivision ordinance, minimum housing code, or other development regulations.

For more detail, check out this 160D Guidance Document on [Plan Consistency Statements](#).

## **Recommendations from Staff and Planning Board**

A governing board can and should consider the recommendations of the planning board and local government staff when deciding on a rezoning or text amendment. General Statute 160D-604 specifically requires that amendments to the zoning ordinance (text or rezoning) must be referred to the planning board for review and comment. Other development ordinances (subdivision, minimum housing, etc.) *must* be submitted for planning board review for initial adoption and *may* be submitted for planning board review for subsequent amendments. When reviewing proposed legislative actions, the planning board considers plan consistency, among other things.

Typically, a local government provides for careful staff review of a proposal prior to it going to the planning board and governing board. The local government staff review may include technical analysis of the range of permitted uses and adequacy of public infrastructure and services, policy analysis of the extent to which a proposal aligns with adopted plans and policies, and fiscal analysis of the projected financial impacts of a proposed development or ordinance amendment, and other analyses as required by the local government policies.

As with the comprehensive plan, recommendations are not binding. A governing board may take action despite the recommendations from staff and boards. But, if a community finds that the governing board frequently takes action in contrast to the plans and recommendations, that may be an indication the community needs to update the plans or reconsider the expectations of review by the planning board and staff.

## **Consideration of All Uses**

When it comes to a conventional rezoning—shifting from one standard zoning district to another standard zoning district—the governing board must consider the full range of uses permitted in the proposed district (See *Hall v. Durham*, 323 N.C. 293 (1988)). If the rezoning is approved, then the property owner will have rights to proceed with any of the allowed uses, so the governing board must give consideration to those uses. This is true even if the developer shows illustrative plans for what they hope to build. For example, if a developer seeks rezoning to the general Highway Commercial zoning district, the developer may indicate in the application materials or hearing that they plan to build a gas station and convenience store. If the rezoning is approved, though, the developer could move forward with a truck stop, big box store, storage facility, or any other uses permitted in the district. For a conventional rezoning, the question is this: Would this zoning district *and the full range of the allowable uses* be appropriate in this location? (Not this: Would the specific proposed use and development be appropriate in this location?) In contrast, conditional zoning and special use permits are appropriately focused on a specific proposal and the approval may be conditioned on a particular site plan.

## Conditions, When Appropriate

Conditional rezoning allows for site-specific conditions to be added to the rezoning. As authorized under G.S. 160D-703, a conditional zoning district must be proposed by the property owner and any conditions must be mutually agreed to by the local government and the property owner. While there is some flexibility for the substance of the conditions, they are limited to conditions that address the development's conformance with applicable plans and the impacts reasonably expected to be generated by the development.

Conditions may include, among other things, limits on the allowable uses at that site. So, whereas a *standard rezoning* must consider all permissible uses, a *conditional rezoning* may be conditioned to limit the allowable uses.

For more detail, check out this 160D Guidance Document on [Conditional Zoning](#).

## Reasonableness for Rezoning

Courts generally defer to the judgment of elected officials to make decisions about what is in the best interest of the community. But spot zoning—when a small area is zoned in a way that is different from surrounding area—receives heightened judicial scrutiny to ensure that the decision is in the public



interest. Treating one parcel differently from the surrounding property raises concerns that the zoning may unfairly benefit or harm that owner (or the neighbors) or that improper factors—such as favoritism or antagonism toward an individual—may have motivated that zoning decision.

If spot zoning is challenged in court, the court will not presume the zoning to be valid, but rather will review the zoning very carefully to ensure that it is reasonable and in the public interest. North Carolina law permits spot zoning, but only if a local government can establish that a particular spot zoning is reasonable. As set forth in *Chrismon v. Guilford County*, 322 N.C. 611 (1988), North Carolina courts apply a set of factors to determine if a spot zoning is reasonable: (i) the size and nature of the tract; (ii) compatibility with existing plans; (iii) the impact of the zoning decision on the landowner, the immediate neighbors, and the surrounding community; and (iv) the relationship between the newly allowed uses in a spot rezoning and the previously allowed uses.

As protection against challenges of spot zoning for small scale rezonings, G.S. 160D-605 requires the governing board to adopt a statement of reasonableness along with the statement of plan consistency.

For this statement the board may consider, among other factors,

- (i) the size, physical conditions, and other attributes of the area proposed to be rezoned,
- (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community,
- (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment;
- (iv) why the action taken is in the public interest; and
- (v) any changed conditions warranting the amendment.

For more detail, check out this blog on [Spot Zoning](#).

## Conclusion

These are some of the specific topics that the governing board definitely should consider for legislative development decisions. For a summary of the impermissible considerations—the topics that are out of bounds for legislative development decisions—check out the [companion blog](#). And check out this blog for more on the [Procedures for Legislative Decisions](#).

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# Sidewalks | A LIVABILITY FACT SHEET

Eight in 10 Americans prefer being in a community that offers sidewalks and good places to walk. Six in 10 prefer a neighborhood that features a mix of houses, shops and services within an easy walk versus a neighborhood that requires a car for every errand.<sup>1</sup>

People who live in neighborhoods with sidewalks are 47 percent more likely than residents of areas without sidewalks to be active at least 39 minutes a day.<sup>2</sup>

Sidewalks play a vital role in community life. As conduits for pedestrian movement and access, they enhance connectivity and promote walking. As public spaces, sidewalks are the front steps to the community, activating streets socially and economically.

Safe, accessible, well-maintained sidewalks are a fundamental community investment that enhances public health and maximizes social capital.<sup>3</sup>

Sidewalks increase foot traffic in retail centers, delivering the customers that local shops and restaurants need in order to thrive. Retail properties with a Walk Score ranking of 80 out of 100 were valued 54 percent higher than those with a Walk Score<sup>4</sup> of 20 and had an increase in net operating income of 42 percent.<sup>5</sup>

Interest in sidewalks is so keen that they've become a factor in home prices. For example, in a scenario where two houses are nearly identical, the one with a five-foot-wide sidewalk and two street trees not only sells for \$4,000 to \$34,000 more but it also sells in less time.

A well-constructed sidewalk for a typical 50-foot-wide residential property might cost a builder \$2,000, but it can return 15 times that investment in resale value. According to a 2009 CEOs for Cities report, even a one-point increase in a community's Walk Score could increase home values by \$700 to \$3,000.<sup>6</sup>

**People who live in neighborhoods with sidewalks are 47 percent more likely than residents of areas without sidewalks to be active for at least 39 minutes a day.**



Good downtown sidewalks have enough room for people to walk, stop and talk, or even sit for a bit. This wide sidewalk in State College, Pa., is made of visually appealing paver stones. Care must be taken when installing paver and similar surfaces so wheelchairs and other wheeled devices can roll smoothly over them.

# Myth-Busting!

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## ■ “No one will use the sidewalk.”

This might have been true in the past, but research published in 2012 by the U.S. Centers for Disease Control and Prevention<sup>7</sup> (CDC) and in 2013 by the National Center for Safe Routes to School<sup>8</sup> shows that a growing number of people are walking, and that many are children and adults age 65 and older.

People just need safe, convenient and pleasant places near their homes, schools and workplaces to make walking routine, says the CDC study.

## ■ “Americans prefer to drive.”

Perhaps, or maybe they’re driving so much because there are no sidewalks! Federal data on vehicle miles traveled and a recent national study show a decline in driving and car ownership during the 2000s in an overwhelming majority of metro areas.

At the same time, the number of people commuting by bicycle and transit increased.<sup>9</sup> A survey by the Surface Transportation Policy Partnership found that 55 percent of Americans would prefer to walk more and drive less.<sup>10</sup>

## ■ “Trees will be destroyed.”

Not necessarily. Sidewalks can be curved to avoid trees. In fact, protecting a tree is one of the few reasons for a sidewalk to deviate from a direct route.<sup>11</sup>

## ■ “A sidewalk will take land from my lawn.”

Many homeowners don’t realize how far from the curb their private property line actually extends. There’s often enough of a public right-of-way easement in place to create a sidewalk without infringing in any way on a property owner’s land.<sup>12</sup>

## ■ “People will walk too close to my house.”

There’s little difference between what passersby can see from a sidewalk versus what they can already see from their cars or by walking along the edge of the street. Any nearness added by a sidewalk would likely be as little as a just a few feet.<sup>13</sup>

## ■ “Sidewalks increase crime.”

Actually, increased pedestrian activity puts more eyes on the street and creates safety in numbers, which deters and reduces criminal activity.<sup>14</sup>

## ■ “Tax dollars are better spent on other needs.”

Since sidewalks increase property values and tax revenues, they serve as an economic engine. Plus, sidewalk maintenance costs are real estate tax-deductible (IRS Publication 530). Sidewalks are also safety investments (by bringing more eyes and ears to the street) and an integral part of a balanced transportation budget.<sup>15</sup>

## ■ “I’ll be liable if someone gets hurt on a sidewalk near my property.”

It depends. Liability is determined by state and local law, but either government or private owner negligence concerning an “unreasonably safe” or “defective condition” (such as a wide crack or raised section) has to be proven in court in order to win a lawsuit.<sup>16</sup>

## ■ “Sidewalks ruin the character of rural neighborhoods.”

It’s only in recent decades that sidewalks have been phased out of developments. There are many ways to build a sidewalk or path to match the design and feel of a community.

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# How To Get It Right



The ideal sidewalk widths: seven feet in residential areas, eight to 12 feet in downtown settings.



Sidewalks that are properly built can last 25 years or more with little more than minimal care.

## When advocating and planning for sidewalks, consider the following:

### ■ Engage neighbors and the community

Expect some opposition and use this fact sheet to help make the case for the sidewalks. Mobilize like-minded people and work together as a neighborhood or community. Meet with your neighbors to raise awareness and address any resistance.

### ■ Make the sidewalk wide enough

Sidewalks are critical in downtown neighborhoods and busy retail areas, both of which have lots of people, destinations and potential conflicts with vehicles. In these areas it's important to install sidewalks that are wide enough to handle foot traffic and features such as cafe seating, benches and other spots for socializing.

### ■ Use a site-appropriate design

A sidewalk should fit its setting. Even rural communities can benefit from a tastefully designed walkway. Make sure sidewalks are well-maintained and appealing, with safe and convenient street crossings and enough width to accommodate two or three people walking side by side.

The ideal setback for a sidewalk is four to 10 feet from the street. Planter strips, trees and on-street parking can extend the buffer, increasing comfort and slowing traffic.

### ■ Prioritize high-use areas and connectivity

At the outset of a sidewalk construction program, prioritize where to build first by focusing on a quarter-mile circle around schools, parks, transit stops and key commercial destinations. Everything within that circle should be a priority for sidewalk construction. Be sure to map sidewalks so they're connected between the primary areas where people work, shop and play.

### ■ Consider driveways

In many neighborhoods and retail areas, driveways are full of both moving and parked cars. Since driveways interrupt a sidewalk's flow and safety, they should be kept to a minimum in commercial areas.

Carefully plan the best way to treat sidewalks that will cross driveways, especially in high-use areas. Alleys are a good tool for separating people from traffic, especially in retail areas.

### ■ Build and maintain with municipal funds

Many communities require property owners to pay for and clear sidewalks (snow, ice, etc.). Since sidewalks are a public benefit, a better policy would be to install and maintain sidewalks with public funds.

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# Success Stories

## ■ Decatur, Georgia: Citywide Sidewalk Program

Decatur has been dubbed the most walkable city in Georgia, with more than 60 miles of sidewalks in its 4.2 square miles. The ongoing, citywide sidewalk improvement program began in 2004 with a Health Impact Assessment and funding from annual appropriations by the Decatur City Commission.

The program's goal is to have a sidewalk on at least one side of every street in town. More than four miles of new and replacement sidewalks had been built by 2014.

## ■ Austin, Texas: Sidewalk Prioritization

The City of Austin has built almost 100 miles of new sidewalks since 2005 to encourage walking as a viable mode of transportation and to improve safety, accessibility and pedestrian mobility.

Austin completed a detailed sidewalk inventory, documented current conditions, obtained public input on sidewalk needs and issues, and established city sidewalk priorities that were organized into a downloadable Sidewalk Prioritization Map. The city prioritizes compliance with the Americans with Disabilities Act, sidewalks that allow children to walk safely to school, a connected network of sidewalks, trails and bikeway, and sidewalks that serve bus stops. More than 300 bus stop sidewalks have been completed since 2011.

## ■ Calloway County, Kentucky: School Sidewalks

Walking or bicycling to school was prohibited in and around the small city of Murray because there were no sidewalks and it wasn't a safe way to travel. The local government offered to build sidewalks if the school system would change the policy. The effort resulted in 15,960 feet of sidewalks, including from the county middle school to a low-income housing area. Hundreds

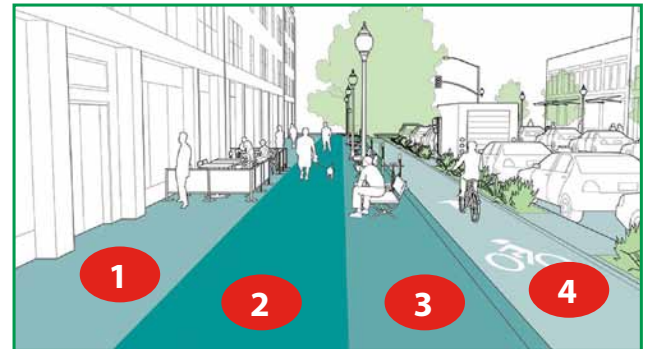
of students now regularly walk to school.

"Every time I look down the street, there are people on the sidewalks, people pulling wagons, people walking their dogs," said a school district administrator.

## HOW IT WORKS

Design guidelines recommend a minimum sidewalk cross section of five feet, exclusive of other amenities and large enough for at least two people to walk side by side. Here's a guide to the potential spaces alongside a property.

- 1. Frontage Zone:** an extension of the building
- 2. Pedestrian Through Zone:** safe and adequate place for walking, five to seven feet wide in residential areas, eight to 12 feet in downtown or commercial settings
- 3. Street Furniture/Curb Zone:** plants, trees, benches, lighting and bike parking to provide a protective barrier from motorized traffic
- 4. Enhancement/Buffer Zone:** curb extensions, parklets, parking, bike riding, bike e-racks and bike stations



National Association of City Transportation Officials, Urban Street Design Guide, nacto.org

## RESOURCES

- Los Angeles County Model Design Manual for Living Streets.** (2011) <http://www.modelstreetdesignmanual.com/>
- Advanced Sidewalks and Streets Toolkit.** AARP. (2011) <http://www.aarp.org/content/dam/aarp/livable-communities/plan/assessments/advanced-streets-and-sidewalks-toolkit-2011-aarp.pdf>
- Costs for Pedestrian and Bicyclist Infrastructure Improvements.** Bushell, M., et al. UNC Highway Safety Research Center, Federal Highway Administration. (October 2013) [http://katana.hsrc.unc.edu/cms/downloads/Countermeasure%20Costs\\_Report\\_Nov2013.pdf](http://katana.hsrc.unc.edu/cms/downloads/Countermeasure%20Costs_Report_Nov2013.pdf)
- Walkability, Real Estate and Public Health Data,** Walk Score Data Services, <http://www.walkscore.com/professional/research.php>
- Sidewalks and Streets Survey.** [http://safety.fhwa.dot.gov/provencountermeasures/fhwa\\_sa\\_12\\_013.htm](http://safety.fhwa.dot.gov/provencountermeasures/fhwa_sa_12_013.htm)
- Business Performance in Walkable Shopping Areas.** Active Living Research. (November 2009) [http://activelivingresearch.org/files/BusinessPerformanceWalkableShoppingAreas\\_Nov2013.pdf](http://activelivingresearch.org/files/BusinessPerformanceWalkableShoppingAreas_Nov2013.pdf)
- Walk Score blog** at <http://blog.walkscore.com/>



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