



Town of North Wilkesboro Board of Adjustment Special Meeting

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North Wilkesboro, NC 28659

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Agenda for January 13th at 5:30 pm

Held in the Board of Commissioners Room 210 9th Street

832 Main Street

North Wilkesboro, NC 28659

Agenda:

1. Meeting called to order
2. Additions/Deletions to the agenda
3. Approval of the agenda*
4. Approval of Minutes
 - a. August 19th, 2025*
 - b. December 16th, 2025*
5. Old Business:
 - a. N/A
6. New Business:
 - a. Chair and Vice-Chair nominations
 - b. Board of Adjustment Training by N-FOCUS
7. Adjourn

**Signifies that there is accompanying documentation in the agenda packet.* For information regarding this meeting please contact the Planning and Inspections Department at 336-667-7129 ext. 3011 or email planning@northwilkesboronc.gov. Any individual with a disability who needs an interpreter or other auxiliary aids, please contact Dylan Blankley at 336-667-7129 ext. 3001 or email at townclerk@northwilkesboronc.gov. Please make this request 48 hours in advance of the scheduled meeting.

Next North Wilkesboro BOA Meeting Date: February 17th, 2026
January 20th, 2026 BOA Meeting Cancelled Due to Lack of Agenda Items

Minutes
Town of North Wilkesboro
Board of Adjustment
August 19th 2025
5:30 P.M.

Members Present: Chair Mike Staley, Vice Chair Martha Nichols, Freida Matthews, and Monica Hawn.

Also Present: Planning Director Joseph Kamperman, Interim Town Manager & Town Clerk Dylan Blankley, Town Attorney Victoria Brooks, Parks and Recreation Director Nate Reavis, Catherine Hill from Fox Rothschild, and Evan Lee from Poyner Spruill. Others in attendance included James Stumbo, Ron Wagoner, David Price, Brian Ralstin, John Wood, Derek Goddard, Will Hamby, and Ike Forester.

Evan Lee of Poyner Spruill introduced himself and stated that the Town would require a unanimous vote for the variance to be approved and the town was willing to proceed. If there are some concerns, the town may request and continuance and would recommend the Board to grant it. The variance required a 4/5th vote to be approved and with four members in attendance we could proceed with the statutory requirement. Mr. Lee continued that he was assisting tonight since the Town was the applicant.

Members of the North Wilkesboro Board of Adjustment assembled in the Board of Commissioners Room at Town Hall for their regular monthly meeting on Tuesday, August 19th, 2025. Chair Staley called the meeting to order at 5:38pm.

Asking for any additions or deletions to the agenda and hearing none, Chair Staley asked for a motion to approve the agenda. Vice Chair Nichols moved to approve the agenda as presented and Ms. Matthews seconded the motion. The motion passed unanimously 4-0.

Approval of Minutes: With one set of Minutes to approve, the following motion ensued:

- Ms. Matthews made a motion to approve the March 13th, 2025, minutes as presented. Vice Chair Nichols seconded and all members voted in favor 4-0.

As there were no items under **Old Business**, Chair Staley moved to the second item on the agenda, **New Business**, *Introduction of Board Member Applicants*, and relinquished the floor to Director Kamperman. Director Kamperman stated that he had received interested members for the Board of Adjustment. The Board of Adjustment was a quasi-judicial board that makes evidence-based decisions so this was a good opportunity for them to come and introduce themselves. First to speak was Will Hamby. Mr. Hamby stated he had lived in North Wilkesboro for over 20 years and currently lived at 1219 Hinshaw Street. Mr. Hamby stated that he looked forward to being a part of the Board of Adjustment and being a greater part of the Town of North Wilkesboro. Mr. Hamby stated that he is looking forward to retirement. He was previously a member of the Moravian Falls Optimist Club, where they did many good things for those in the community. Mr. Hamby continued that he served on the Moravian Falls Fire Department for 15 years and was Assistant Chief during his time there and looked forward to serving if approved. Next was Ike Forester. Mr. Forester stated that he was born in North Wilkesboro. He stated that he is retired and was asked about serving and is interesting in becoming involved and thanked the Board for the opportunity.

The next item on the agenda was the *Smoot Park Flood Variance*. Mr. Evan Lee acting as attorney for the North Wilkesboro Board of Adjustment stated that the item should be reintroduced, oaths issued, and then allow the applicant to present their case. The oath was administered to Director Kamperman, Interim Town Manager &

Town Clerk Blankley, Town Attorney Brooks, Parks and Recreation Director Reavis, Ms. Hill, Mr. Stumbo, Mr. Wagoner, Mr. Price, Mr. Ralstin, Mr. Wood, and Mr. Goddard. The oath stated, *“Do you solemnly swear or affirm that the evidence you shall give to the board in this action shall be the truth, the whole truth, and nothing but the truth so help you God?”* Mr. Kamperman introduced the variance request before the Board of Adjustment; the Town of North Wilkesboro is the applicant requesting a variance for the project located at 202 Chestnut Street. The question is regarding the Smoot Park Renovation. The petition is due to a part of the renovation; the parcel number is 1403485 and Pin 3868-94-4945. The variance is being sought from Zoning Ordinance Article VI, Section 6.5 (C) Article 5 (b) (2). Mr. Kamperman stated that due to substantial improvements needed, the ordinance was requiring the structure to be elevated or floodproofed. The requirement was after a percentage of required improvements; the structure must be elevated or floodproofed. The current structure was 11 inches short of the required base flood elevation of 963 feet. The finished floor elevation is 962.1. A survey of the structure will be entered into evidence. Due to the age of the structure the applicant is stating that raising or flood proofing the facility would not be possible. The Board of Adjustment will consider the general variance hardship standards, Zoning Ordinance Section 3.6 (C), and additional standards for variance from floodplain regulation from Zoning Ordinance Article VI, Section 6.5 (C) Article 4 (e) (4).

Mr. Staley called on the applicant represented by Ms. Hill. Ms. Hill introduced herself as an attorney for the law firm Fox Rothchild on behalf of the applicant the Town of North Wilkesboro. The property is 202 Chestnut Street, and the focus is on the existing pool house. The pool house was constructed in 1974 and had not been renovated since then. There are many needed improvements needed to the existing pool house including ADA and accessibility requirements. The improvements were called for in the 2022 Smoot Park Master Plan which was adopted after community input. The required changes were mostly interior; there would not be a change to the existing building footprint. The existing building is 2,400 square feet. These changes could not be made without a variance from the current Floodplain Prevention Ordinance, specifically that the building be elevated or completely floodproofed. There were several standards in the zoning ordinance for the variance to be granted, we had provided answers to each of the written standards. The answers to those standards would become part of the written record and would be addressed through expert testimony. Ms. Hill called upon Director Reavis to speak about an overview of the park, pool house, and need of the project.

Mr. Reavis confirmed that he was sworn in. Mr. Reavis stated that he had worked for the Town for 9.5 years and had been in his role for 1.5 years. Ms. Hill asked Mr. Reavis to explain the history of the park and pool house. Mr. Reavis stated that Smoot Park was built in 1953 and the pool house building in 1974. Ms. Hill asked Mr. Reavis to elaborate on the interaction between park amenities and the pool house. Mr. Reavis stated that the structure is the heart of the park housing the bathhouse, shower rooms, bathrooms, and the staff during park operations. Ms. Hill asked how the pool house functioned to access the facility. Mr. Reavis stated that you would check in at the pool house to enter the rest of the amenities for the pool and pavilion. Ms. Hill asked how this was a public amenity and what frequency it is used. Mr. Reavis stated that last year they had almost 9,000 entries to the pool and for the last 3 years there had been over 8,000 entries. Ms. Hill asked if this was the only public pool in Wilkes County. Mr. Reavis replied it was one of two (2) public pools in the county. Ms. Hill asked the zoning of the property. Mr. Reavis replied General Business. Ms. Hill asked if the property will maintain its current use. Mr. Reavis confirmed it will remain the same. Ms. Hill asked Mr. Reavis to provide an overview of the 2022 Smoot Park Master Plan. Mr. Reavis stated the master plan had multiple input session with 400 submissions through public input on what they wanted to see in North Wilkesboro. 300 of the submissions were related to the pool and another 250 related to the splash pad. Ms. Hill asked Mr. Reavis about the funding for the project. Mr. Reavis stated that the Town received a large grant from the State of North Carolina a few years ago. The end of the grant funding was May 2026 and was for 3 million dollars. The Town had received other grants, but they were to bring the pool into ADA compliance. Ms. Hill asked Mr. Reavis about the Town's Comprehensive Plan. She asked if the improvements were consistent with the Comprehensive Plan? Mr. Reavis affirmed they were consistent with the Comprehensive Plan. One of the goals was to connect

pedestrian facilities to the greenway and would connect the park to the greenway, while encouraging a variety of sound recreational areas. *Upon no further questions Mr. Reavis stepped down from the podium.*

Next Ms. Hill called upon James “Jim” Stumbo from Stewart Cooper Newell Architects to speak on the pool house design and existing conditions of the pool house. Mr. Stumbo introduced himself as James “Jim” Stumbo, a principal architect from Stewart Cooper Newell. Mr. Stumbo explained the following. They were the architects of record for the project, had been practicing for 38 years, and had been sworn in. The building had been there for 50 years, when it was built it should have met the required codes of the time. These codes have change tremendously since the building was built. The North Carolina building codes has accessibility, mechanical, electrical, and plumbing requirements. During the last 50 years all of these codes had changed. The federal government had added requirements for ADA and accessibility. The building today does not meet any of the current codes or needs. The mechanical, and electrical systems either do not meet code, do not work, or both. Mr. Stumbo stated that the building was being brought up to the current code requirements. First was accessibility, by changing out all of the doors to the correct size, adding accessibility toilet rooms, showers, and changing areas to meet the requirements of ADA and North Carolina Accessibility Code. All current mechanical, electrical, and plumbing requirements were being met by replacing them with new systems. The building is approximately 2,400 square feet and there would be no changes to the existing exterior walls. The inside walls were being changed to meet current needs. An example was the current basket room; nobody uses those as personal storage any more. Removing the basket room created additional space. Mr. Stumbo stated there were additional restrooms that would be accessible, showers that were private, and the ability to access those rooms accessibly. Family rooms would also be added that were accessible. Staff offices, restrooms, and work areas would be added to control access to the building while maintaining visibility to the pool. *Ms. Hill presented current pictures and design renderings of the new pool house.* Ms. Hill asked Mr. Stumbo to verify the footprint of the building would not change. Mr. Stumbo verified this. Director Kamperman asked if the pictures needed to be submitted into the record. *Ms. Hill provided a hard copy of the PowerPoint to submit into the record.*

Next Ms. Hill called upon Derek Goddard from Blue Ridge Environmental Consultants to speak on the Floodplain Ordinance and the nature of the variance request. Mr. Goddard introduced himself as Derek Goddard with Blue Ridge Environmental Consultants (BREC) in North Wilkesboro and affirmed he had been sworn in. Mr. Goddard continued that they are a civil engineering, land planning, and environmental consulting firm. Mr. Goddard stated he had been with the company for 24 years, his expertise is in regulatory and environmental compliance, and his role in the Smoot Park Project was as a project consultant to assist with regulatory compliance. Ms. Hill requested Mr. Goddard to speak on the Floodplain Ordinance, what the ordinance requires, and what the Town had requested a variance from. Mr. Goddard stated the Floodplain Ordinance is part of the model ordinance adopted from FEMA. It is in Article 6 of the Town Zoning Ordinance and applies to properties in the 100 year and 500-year floodplain. *Mr. Goddard referenced a map that presented the 100-year floodplain in red and the 500-year floodplain in blue.* Mr. Goddard stated buildings in the 100-year floodplain are required to be elevated 1 foot above the Base Flood Elevation (BFE) or floodproofed. Smoot Park abuts both the 100 year and 500-year zones. In the ordinance the more restrictive zone is what applies when there is substantial improvement made to the building. The ordinance requires the Town to elevate the building one foot or floodproof the exterior of the building. Ms. Hill called upon Mr. Stumbo to discuss why the building could not be elevated or floodproofed.

Vice Chair Nichols asked if it was required legally to go through all of the witnesses in order to vote on the variance. Mr. Lee stated that they needed to go through all of the factual reasons why and can go through each standard briefly. Ms. Hill stated that the applicant was more than halfway complete and would be quick. Vice Chair Nichols stated that she listened to this project through the Town’s Board of Commissioners Meetings. Ms. Hill stated that they wanted to get all of the evidence on record in order to support the case.

Ms. Hill asked Mr. Stumbo why the existing pool house could not be elevated or dry proofed. Mr. Stumbo stated the pool house building was 50 years old, built with concrete block, on a concrete slab. Mr. Stumbo explained the following. A traditional house is a wood frame house on a wood joist floor; it is not hard to do. Picking up a concrete slab and raising it, the building would not survive that. There were no drawings of the existing building to determine the characteristics of the building, so dry flood proofing cannot be proven. The only other way to do this is to build a reinforced retaining wall around the building, again this is not practical based on existing walls and foundations. Mr. Stumbo stated in his view dry proofing or elevating the building is not practical. The next solution was to wet floodproof the building, this is typically seen in residential building and not permitted by the ordinance so we are asking for the variance. Mr. Stumbo proposed to install wet floodproofing throughout the building to allow water to flow through the building rather than holding it back. Ms. Hill asked Mr. Stumbo about elevating the equipment. Mr. Stumbo stated they plan to elevate all electrical and mechanical equipment 18 inches above BFE rather than the ordinance required 12 inches so no equipment will be in the floodplain. Mr. Stumbo called attention to the existing pool chemical and filtration building, stating that it was in poor shape. The building will be removed and rebuilt wholesale new. The new building will be raised above floodplain as required by the ordinance. Ms. Hill asked Mr. Stumbo to confirm that the existing pool house building did not have wet proofing, so even though the Town was not meeting the code, flood wise, they were improving the existing situation. Mr. Stumbo affirmed this and stated currently the building creates an impression of pushing the flood waters back. By adding wet floodproofing the flood level will be lower. *After no further questions, Ms. Hill dismissed Mr. Stumbo.*

Next Ms. Hill called upon Mr. Wood of Benesch to introduce himself and speak on his relationship to the project. Mr. Wood stated that his name is Jon Wood with Benesch. He is serving as the project manager for Benesch who provided all the site civil work. Anything five feet or more from the building was worked on to implement the master plan. Ms. Hill asked Mr. Wood to explain the impact that raising the pool house would have on the existing pool. Mr. Wood stated that if you were to raise the pool house a foot you would have to raise the existing splashpad, that they are not touching, as part of the project and the pool deck the same distance to keep everything accessible. The pumphouse worked out to allow accessing it from a sidewalk access between the pavilion and the building. Currently everything including pool chemicals come through the pool house. Mr. Wood continued that with the accessibility grants if the town is trying to make best use of it, it would be the most cost prohibitive to raise that portion of the site.

Next Ms. Hill called upon Mr. Ralstin of Benesch to introduce himself, his title, and role with the project. Mr. Ralstin stated that his name is Brian Ralstin with Benesch and he had been sworn in. Mr. Ralstin continued that he was the principal hydrologic engineer that reviewed floodplain impacts regarding the hydraulic design. They took the existing model from the NCFRIS site and applied the proposed information including grading and no changes to the building. There was no change in base flood elevation compared to the current maps. Ms. Hill asked Mr. Ralstin to address the standard regarding the expected heights, velocity duration, rate of rise of flood waters and the effect of wave action expected at the site. Mr. Ralstin explained the following. Mr. Ralstin stated that with the 1D model that was ran demonstrated back water from the Yadkin River coming up tributary Y3 and there will not be any wave action happening it will be static. The model shows .5 feet per second, a low velocity of water movement. The depths vary as the terrain changes between 1-5 feet. Ms. Hill asked if this was the worst-case scenario. Mr. Ralstin stated this is the 100-year flood plain or the 1% chance of a flood happening every year. Vice Chair Nichols asked if they had an idea how high the water got before we had W. Kerr Scott Dam, in reference to the flooding events of 1916 and 1940. Mr. Ralstin affirmed this. This model is done with the dam in place. Ms. Hill asked if the risk today is the same for the existing building. Mr. Ralstin affirmed this. Ms. Hill asked if the proposed plan would incur an increase in flood levels. Mr. Ralstin stated the plan as proposed would not increase the flood levels.

Ms. Hill recalled Mr. Goddard to address some technical questions. Ms. Hill asked Mr. Goddard if there was any danger of materials being swept into land to the injury of others. Mr. Goddard stated No. Ms. Hill asked

about the susceptibility of the facility and its contents to flood damage and the effect of such damage to the owner. Mr. Goddard stated that in his opinion there was none. He continued that he did not think this facility was susceptible to flood damage. Ms. Hill asked Mr. Goddard about the access to the property in a flood for ordinary or emergency vehicles. Mr. Goddard stated in his opinion vehicles will be able to access the property during flood events and have before. Ms. Hill asked if the road was in the 500-year flood plain. Mr. Goddard affirmed this. Ms. Hill asked if the pool house had ever flooded. Mr. Goddard stated that to his knowledge it had not. Ms. Hill presented a picture of the pool house at 10:30 AM the morning after Hurricane Helene showing conditions.

Ms. Hill stated that in summary this is an important community facility and has been for over 50 years. The hardship is caused by the age and location of the building in proximity to other park amenities and also the need to bring into compliance with life safety health codes. It makes sense for the pool house to be where the pool is, it cannot be separated from the current amenities that surround it. It would not be feasible to take one piece and raise it; with a loss of the pool house, it would be a complete loss of the park amenities. Any concern flood wise that would exist with the project exist today and the situation would actually be improved by wetproofing the building to allow water to pass through and elevating chemical, mechanical, and existing chemical storage above flood waters.

Vice Chair Nichols stated that Ms. Matthews used to run everyone up and down the hill all the time to Smoot Park where the pool house is for PE for years. Ms. Nichols explained the following. My family grew up at the tannery at Smoot Park, plus listening to Board meetings. It would be foolish to not grant the variance in her opinion. Vice Chair Nichols thanked Mr. Reavis for his efforts, and stated that the Town was actually moving forward.

Mr. Lee asked if any additional people want to speak and opened the door to a transition with no testimony against the variance at this time and walked through why. Mr. Lee explained that the Board could now open for a vote. Mr. Kamperman suggested entering the agenda packet into evidence. Ms. Hill stated under NCGS 160D agenda packets are considered administrative materials, but to the extent they are not the Town would like to enter them into the record. Vice Chair Nichols stated there was an original pool in the parking lot at Smoot Park. Ms. Matthews stated there was one near the greenway toward Wilkesboro.

Chairmen Staley stated in order to qualify for a variance from the ordinance the applicant must prove the following: do the unnecessary hardships result from a strict application of the ordinance. *All members agreed 4-0.* Do the unnecessary hardships result from conditions that are peculiar to the applicant's property. *All members agreed 4-0.* The unnecessary hardship is not self-created. *All members agreed 4-0.* The requested variance is consistent with the spirit, intent, and purpose of the ordinance so that public safety is achieved. *All members agreed 4-0.*

Next was the floodplain Regulation. Chairmen Staley stated the danger that materials may be swept onto other lands to the injury of others. *All members agreed that it met this standard 4-0.* The danger to life and property due to flooding or erosion damage. *All members agreed that it met this standard 4-0.* The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner. *All members agreed that it met this standard 4-0.* The importance of the services provided by the proposed facility to the community. *All members agreed that it met this standard 4-0.* The necessity to the facility of a waterfront location as defined under Article VI, Section 6.5 (C) Article 2 of this ordinance as a functionally dependent facility, where applicable. *All members agreed that it met this standard 4-0.* The availability of alternative locations, not subject to flooding or erosion damage for the proposed use. *All members agreed that it met this standard 4-0.* The compatibility of the proposed use with existing and anticipated development. *All members agreed that it met this standard 4-0.* The relationship with the proposed use to the Comprehensive Plan and floodplain management program for that area. *All members agreed that it met this standard 4-0.* The safety of

access to the property in times of flood for ordinary and emergency vehicles. *All members agreed that it met this standard 4-0.* The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action if applicable expected at the site. *All members agreed that it met this standard 4-0.* The cost of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, and streets and bridges. *All members agreed that it met this standard 4-0.*

Chairmen Staley moved to approve the variance requested on tonight's agenda based on all of the variance standards being met and findings stated during our discussion. Chairmen Staley called for a motion to approve the variance. Ms. Matthews made the motion. Vice Chair Nichols seconded the motion. The motion passed unanimously (4-0).

Mr. Lee stated at the next meeting staff will draft a decision and the Board would need to vote on the decision. Mr. Kamperman stated they will provide the Order Document, which would require a vote due to changes in state law.

Vice Chair Nichols commended staff for their work on the Smoot Park Project.

Chairmen Staley stated that July 19th there will be a points race at North Wilkesboro Speedway.

Director Kamperman stated currently that the Smoot Tannery/Jenkins site was going through the process to get a grants manager for the \$1.78 million EPA Brownfields Cleanup Grant. Mr. Kamperman continued that he and Interim Manager Blankley attended the National Brownfields conference in Chicago and learned a great deal. Staff also met some individuals that will help with the River District and Downtown masterplan including contacts to potentially acquire an easement for the rail trail. Staff anticipate the UDO to be finalized in the next few months.

Vice Chair Nichols asked about voting on members of the board. Director Kamperman stated moving forward He and Chair Staley discussed meeting the applicants and what they bring to the table, but the ultimate decision is made by the Board of Commissioners. Moving forward they plan to let the Board of Commissioners and County Commissioners decide if they serve.

At 6:33 PM, the motion to adjourn was made by Vice Chair Nichols and seconded by Ms. Matthews. The motion passed unanimously (4-0).

J. Dylan Blankley, Town Clerk
Board of Adjustment Secretary

Mike Staley, Board of Adjustment Chair
Martha Nichols, Board of Adjustment Vice Chair

MINUTES
Town of North Wilkesboro
Board of Adjustment
December 16th, 2025
5:30 p.m.

Members Present: Chair Mike Staley, Isaac Forester, William Hamby, Martha Nichols, and Ron Queen
Also Present: Planning Director Joseph Kamperman, Town Clerk/Assistant Town Manager Dylan Blankley, and Planner 1 Forest Pearson

Members of the North Wilkesboro Board of Adjustment assembled in the Board of Commissioners Room at Town Hall for their regular monthly meeting on Tuesday, December 16th, 2025. Chair Staley called the meeting to order at 5:30 pm.

Asking for any additions or deletions to the agenda and hearing none, Chair Staley asked for a motion to approve the agenda. Ms. Nichols moved to approve the agenda as presented and Mr. Forester seconded the motion. The motion passed unanimously 5-0.

As there were no items under **Minutes** and **Old Business**, Chair Staley moved to the sixth item on the agenda **New Business** to discuss the *Approval of Smoot Park Variance Order*. Director Kamperman explained that the variance order would need approval. Director Kamperman explained that once an order is approved and signed then it is recorded at the Register of Deeds to run with the land. Director Kamperman asked for a motion to approve the Smoot Park Variance Order. Mr. Forester made a motion to approve the Smoot Park Variance Order and Ms. Nichols seconded the motion. The motion passed unanimously 5-0.

Continuing to the next **New Business** item, *Approval of 2026 Board of Adjustment Meeting calendar dates*. Director Kamperman presented the new calendar dates to the Board of Adjustment. Director Kamperman stated that the first Board of Adjustment meeting would be held on January 20th, 2026 with an application deadline of December 31st, 2025. Director Kamperman stated that he had not yet received any applications for a special use permit or variance. Director Kamperman acknowledged that the Board of Adjustment had been contacted by Planner 1 Forest Pearson for Board of Adjustment Training on January 13th, 2026. Director Kamperman stated that he set the training date because he wanted the Board of Adjustment members to participate in this training before their first 2026 meeting date. Director Kamperman stated that the training would be held between 5:30 and 7:00 PM and food would be provided for Board Members during the meeting. Director Kamperman explained that the third party contracted company N-FOCUS would be conducting the training. Director Kamperman stated that there would be other people in attendance besides Board Members. Director Kamperman asked if anyone could not attend the Board of Adjustment Training. Ms. Nichols explained she might not be able to attend the training. Director Kamperman asked the Board of Adjustment Members to tell him if circumstances arose preventing them from attending the training. Director Kamperman stated that there was no approval by the Board of Adjustment needed for the 2026 Board of Adjustment calendar dates. Director Kamperman explained that Board of Adjustment meeting dates had been changed from Thursdays to Tuesdays to avoid meetings having to be after Planning Board Meetings.

Director Kamperman moved to the seventh agenda item, **Planning Director's Report**. Director Kamperman stated that the Board of Adjustment still had two vacant spots in the Extraterritorial Jurisdiction. Director Kamperman explained that it was important that the vacant Board of Adjustment spots were filled so that meetings were less likely to be canceled if Quorum was not met. Director Kamperman asked the Board to let people know within the community that there were vacant Board openings. Director Kamperman explained that the Smoot Tannery Brownfields project was back in motion now that the federal government was open again. Director Kamperman stated that he hoped that demolition would start in middle of June. Director Kamperman

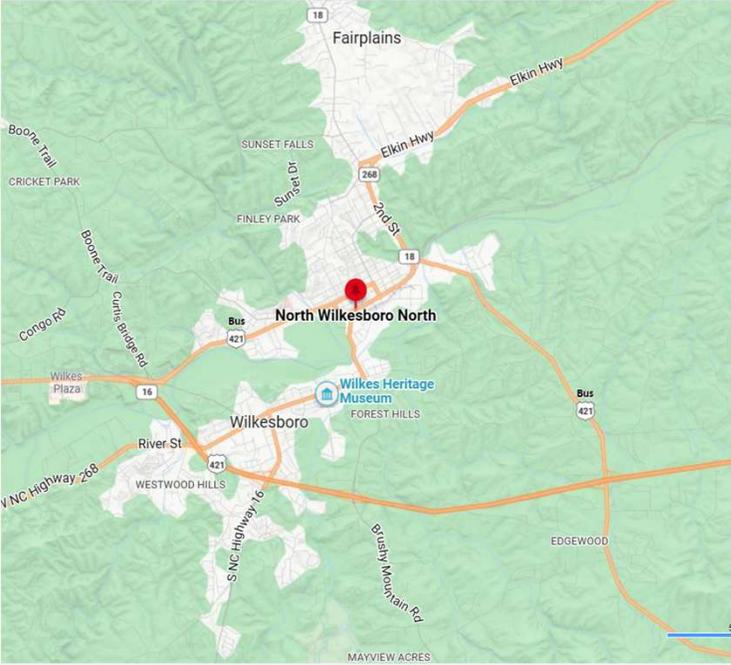
stated that the UDO would be under attorney review again at the start of the new year. Ms. Nichols asked if WithersRavenel was still the contractor drafting the UDO. Director Kamperman stated that WithersRavenel was still working on the UDO and would incorporate changes requested after attorney review. Director Kamperman stated that it was typical for the UDO process to take two to three years before completion. Director Kamperman shared that the Town of North Wilkesboro had been approved for bank restoration funds for the greenway amounting to 1.9 million dollars. Town Clerk Blankley explained that the Town sought out funding for bank restoration after damages had occurred due to Hurricane Helene stormwater surges. Town Clerk Blankley stated that the grant for the restoration funding was awarded to the Town that week. Director Kamperman explained that the funding was important for transportation in the community and to protect the overall investment the community had already given to the construction of the greenway.

With no further discussion offered or requested, Mr. Hamby made a motion to adjourn. Ms. Nichols seconded and the motion passed by unanimous vote 5-0. The meeting adjourned at 5:40 pm.

J. Dylan Blankley, Town Clerk
Board of Adjustment Secretary

**Minutes prepared by Forest Pearson, Planner 1*

Mike Staley, Board of Adjustment Chair
Martha Nichols, Board of Adjustment Vice-Chair




North Wilkesboro, NC
BOA TRAINING – January 2026
N-FOCUS INC.
LOCAL GOVERNMENT SERVICES

WHAT WE ARE HERE TO REVIEW/DISCUSS:

1. Types of decisions and local boards;
2. Rules of Procedure, Conflict of Interest and Recusals;
3. Board of Adjustment (Evidentiary Hearings);
4. Important Issues to remember:
 - Evidentiary hearing and quasi-judicial decision;
 - What is a variance, appeal, and special use permit
 - Discussion of standing;
 - What constitutes evidence and how do we make decisions;
5. Deliberations and Voting

Typical Local Government Decisions:

- Legislative (Governing Boards) - Zoning Map, Text, Land Use Plan/Future Land Use Map Amendments, certain permits, can include subdivisions;
- Quasi-judicial (Board of Adjustment/Governing Body) Variance, Appeal, Special Use Permits;
- Advisory (Planning Board) recommendations on legislative matters (Zoning map/text, Land Use plan, Major Subdivisions, etc.);
- Administrative (Staff) decisions on the 'day-to-day non-discretionary matters' related to the implementation ordinance (i.e. permits, minor subdivisions, final determinations, etc.).

Local Boards In a Nutshell:

• **Town Board:**

- Ultimate decision makers on legislative items (zoning and land use plan decisions);
- Sets land use policy with adoption of Land Use Plan/Future Land Use Map;
- Adopts and directs implementation of fiscal policy;
- Directly responsible to the local electorate (i.e. can be voted out of office).

Local Boards In a Nutshell:

- **Planning Board:**
 - Appointed board
 - Gives advice to staff and elected officials on various applications/projects;
 - 'Keepers of Plans' making recommendations on adoption of Land Use Plan/other planning studies.
- **Board of Adjustment:**
 - Appointed Board;
 - 'Land Use Judges' making Quasi-judicial decisions (special use, appeals and variances);
 - Applies land use regulations and policies in specific circumstances (**do not make policy**);
 - Acts in certain circumstances (variance/appeal) as 'relief valve' - determine if local rules are being reasonably applied.

Rules of Procedure:

Separate document establishing operational rules, including:

- A. Officer elections (when occur, roles of officers, terms, etc.);
- B. Conduct of members and meetings;
- C. Attendance requirements / How absences are handled;
- D. Typical meeting date/time/location;
- E. Staffing (i.e., who serves as Board secretary and professional staff. Normally local government officials).

Why here and not the Ordinance? Hold Legislative Hearing to amend (two to three month waiting period). Rules of Procedure amended at a regular Board meeting with simple notice.

Rules of Procedure – Things to Keep In Mind:

1. Formally adopted by the Board;
2. ALWAYS have copy at every meeting;
3. Evaluate every few years to ensure compliance with State rules, local regulations, and Town policy;
- 4. DO NOT DUPLICATE INFORMATION FROM ORDINANCE.** If in Ordinance, don't put in Rules (i.e. voting, advertising, required findings, etc.);
- 5. Make sure Rules of Procedure and applicable Zoning procedures are always followed!**

What is a Conflict Of Interest:

1. Where board member duty to act in the public interest clashes with the member's inclination to advance personal interest.
2. Can be financial, personal bias, or association with those affected by a decision.

In NC, you must recuse yourself if you have:

- Fixed opinion on matter not subject to change
- Undisclosed ex-parte conversation (**Evidentiary Hearing matter only**)
- Close familial business or other associational relationship w/applicant
- Financial interest in outcome.

NCGS 160D-109 – Conflicts of Interest

1. Board member shall not participate and/or vote on a matter:
 - Violate affected persons' constitutional rights to an impartial decision maker.
 - Considered reasonably likely to have a direct, substantial, and readily identifiable impact on the member.
 - If applicant/involved party is a person with whom the member has a close familial, business, or other associational relationship with.
2. If an objection is raised to member's participation, who does not recuse themselves, remaining members shall by majority vote rule on objection. (G.S. 160D-109).

Local Ordinances need to be updated to reference the 'Conflict of Interest' provisions for staff and local advisory boards consistent with NCGS 160D-109.



The Board of Adjustment

1. Per local Ordinance, consists of 6 regular members and 2 alternates;
 - **INCLUDES ETJ MEMBERSHIP**
2. Quorum is 5 'sitting members';
3. Local Ordinance establishes attendance policy, notification requirements, quorum and voting, election of chair and vice chair, etc.

NOTE: There are also references to a 'Rules of Procedure' document adopted by the Board as well.

Board of Adjustment– In General:

Under State law:

- Appeals from ‘written decision’ made by staff;
- Requests for variances;
- Hear and decide appeals from any decision or determination made by the Watershed & Stormwater Administrator in the enforcement of this Ordinance (if applicable);
- To hear and decide appeals and requests for variances from the requirements of the Flood Damage Prevention provisions of this Ordinance; and
- To hear and decide all matters referred to it or upon by the Town Board

❖ **Example: Special Use Permits are handled by the local BOA**

Members required to take an Oath of Office (NCGS 160A-61)

Evidentiary Hearings and Quasi-Judicial Decisions

- Involves the application of ordinance policies to situations.
Does not involve setting new policy;
- Two key elements:
 - **The finding of facts regarding the specific proposal and**
 - **The exercise of judgment and discretion in applying predetermined policies to the situation.**
- Per NCGS 160D-705 Variances, Administrative decisions related to interpretation/enforcement of land use regulations, and Special Use Permits require a quasi-judicial zoning decision.
NOTE: quasi-judicial procedures are detailed in NCGS 160D-406.

Quasi-Judicial Decisions – Overview:

1. Occur during previously advertised ‘Evidentiary Hearing’;
2. People give evidence...**only** after being **sworn in/affirmed** **AND** only after it's been determined they have standing;
3. Hearing is to gather evidence...**not gauge popularity of application**;
4. Decisions based on competent material evidence and sworn testimony entered into the record ... not based solely on financial impacts (good, bad, or indifferent).
 - **Does not matter if project will bring in higher tax value for the Town if developed!**

Overview - continued

7. Board **REQUIRED** to make supported decision ... **share required findings with applicant so they provide detail on how request complies with Ordinance.**
8. Written record of hearing **MUST** include written findings **AND** facts supporting them.
 - NOTE: IDENTIFY HOW CONTESTED FACTS WERE RESOLVED**
9. Final decision sent to applicant and any party requesting copy.
10. Decision can be appealed to Superior Court (30 days from date of availability).

What are Meetings Like:

1. Opened by Chair with procedures explained;
2. Member has conflict, **MUST** identify and explain the conflict (i.e. ex-parte communication(s), financial interests, opinions on the case not subject to change, etc.). **Vote to excuse member and ask alternate to serve in member place;**
3. Persons (including staff) giving evidence/testimony get sworn in/affirmed by Chair or Secretary;



Meeting (continued):

The Oath or Affirmation: Those offering testimony must be put under oath or affirm to tell the truth.

WHY??? **Most importantly, required.** Reminds witnesses of seriousness of the matter/need for 'facts', not opinions or speculation.

- Sworn in at one time at the beginning of the hearing or before they begin to testify.
- For those who do not wish to take a 'religious' oath, they can make an affirmation to present factual information/testimony.

NOTE: Have sign up sheet for those who want to present evidence.

Meeting (continued):

4. Staff (once sworn) gives overview. Typically asks for report, application, and other materials be entered into the record.
5. Applicant (or agent, attorney) presents case, enters evidence into the record;
6. Others who are sworn in can speak.

NOTE: Only those with standing can address the Board and offer evidence/sworn testimony (more later).

Persons who are sworn in can be cross-examined by persons with standing!

Meeting (continued):

7. Once parties have testified, and Board have asked questions, hearing closed (formal motion and vote).

NOTE(S): Once Hearing is Closed

- No other public comment/input allowed (including staff);
- Board cannot ask questions of applicant or other parties (including staff);
- Board **can receive** clarifications on testimony and allow applicant and/or their legal representative to comment on conditions.

Make Sure You Do the Following:

- Listen to the evidence. Is it reasonable? Does it make sense?
- Ask questions, especially if something does not make sense! **Don't take everything at face value.**
- Have the evidence you need to make a proper decision. Do you need "experts"...i.e., appraisers, engineers...to testify?
- Consider continuing the case if you need more evidence or time to decide.

Make Sure You Do the Following:

- Make findings based on the evidence presented;
- Make sure that there is enough discussion/evidence in the record to give a judge a reasonable opportunity to know why/how you made your decision.

Deliberations:

Decisions based on the *substantial, competent and material evidence* presented at hearing.

- **Hearsay testimony/commentary should not be relied upon;**
- **Evidence to determine approval/denial of request is limited to that information presented under oath.**

Question: If a required findings is found in the negative, do you need to continue with the deliberations?

YES! Provide response to all required findings!

Deliberations - Conditions:

- Mutually agreeable conditions can be placed on approval under specific circumstances.
- Conditions must be fair and reasonable and be variance or land-use related.
- Applicant should have time to comment on conditions the Board offers prior to a vote being taken.



Standing: Just what the heck is standing???

NCGS 160D-1402(c) defines “standing” as:

- a. Ownership [or leasehold] interest in subject property, in decision, or an interest created by easement, restriction, or covenant in the property.
- b. Has option/contract to purchase property.
- c. Applicant submitting request.
- d. Person who will suffer **special damages** as the result of the decision.
****MUST DEMONSTRATE FOR THE BOARD****
- e. The local government



State law indicates:

An incorporated or unincorporated association [e.g., HOA] can establish standing to respond to a request so long as: *the association was not created in response to the particular development or issue that is the subject of the appeal.*

Board’s decide standing as individuals are called to testify.

MAY also choose to address standing at the outset of a meeting prior to accepting any testimony on a matter.

Decision should be made consistent with any established rules of procedure and in consultation with your appropriate legal counsel.





Evidence:

1. Quasi-judicial decisions made on **competent material evidence and sworn testimony**;
2. 'Sworn Testimony' from experts or individuals with direct/firsthand knowledge. **Lay witness testimony and unsubstantiated opinions are not evidence.**
3. NCGS 160D-1402(j)(3) **does not** allow reliance on lay witness testimony on:
 - Use of property that would affect property values
 - Increase in vehicular traffic that would pose a danger to public safety
 - Matters which only expert testimony would generally be relied upon

Let persons know if what they are saying is perceived as "hearsay"

Evidence – Continued:

Applicants have burden of producing sufficient evidence for the Board to conclude 'standards' are met. If insufficient evidence presented, the application **must be denied**.

- **Board can continue hearing to a later date to receive additional evidence.**

'IF' sufficient evidence is presented, and there is no evidence in the record indicating otherwise, the applicant is entitled to approval. If **conflicting evidence** is presented, Board **must determine** which facts it believes are correct.





Evidence – Final Thoughts:

- Hearsay. A statement about the facts made by someone not present and available for cross-examination (i.e., email, affidavit, etc.,) generally not allowed.
- Opinions. Should be offered only by a properly qualified expert witness.
- False testimony. A person who deliberately gives false testimony under oath is potentially subject to criminal charges for perjury.
- Outside evidence. Persons affected by a decision have legal right to hear **ALL** the information presented to Board members, to know all the “**facts**” being considered. **Only facts presented to the full board at the hearing may be considered.**

Decisions:

1. What were the facts heard during the case?
2. How do these facts relate to each of the required findings?
3. How do you resolve disputed testimony/evidence?
4. Is there enough factual evidence to support each finding or your decision?
5. Does your decision make sense? Is it being reasonable? Is the request consistent with the spirit and intent of the Ordinance?



Variance – What are they???

- Bluntly, permission to engage in development contrary to Ordinance due to factors beyond property owner's control;
- A 'safety valve' allowing adjustment of rules to fit individual unanticipated situations.
- Standards for variance very strict involving specific findings:
 - Unnecessary hardship result from regulations
 - Issues are peculiar to the property (not universal)
 - Need is not self-induced (i.e. hardship not created by the applicant)
 - Spirit of Ordinance is Preserved

Variance – What are they???

- Public Safety and Welfare Secured Substantial Justice Done with decision.
- Variances **SHALL NOT** be used as a substitute for zoning ordinance amendments. Board members **CANNOT** substitute their judgment for that of elected officials.

NOTE: BOARD CAN RECOMMEND ORDINANCE CHANGES SEPARATE FROM A CASE.

Examples of Permitted and Un-permitted Variances

• Permitted:

- Allowing for the reduction in the required number of off-street parking spaces from 13 to 11 spaces due to site topography;
- Allowing a reduction in required rear yard setback from 30 to 25 feet due to an irregularly shaped lot;

• Un-Permitted/Illegal:

- Allowing use of property not permitted in a zoning district. The district does not permit motorcycle sales, applicant is seeking a variance for one ('use' variances are illegal).
- A variance may not allow for the 'extension' of an existing nonconformity beyond what the ordinance allows.

VARIANCES – Required Findings of Fact:

NCGS 160D-705 (d):

1. *Unnecessary hardship would result from the strict application of the regulation.*

NOTE: Not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

- Hardship is determined on a case-by-case basis;
- Must be more than 'simple inconvenience' for property owner;
 - **EXAMPLES:** Simple preference for a lenient height restriction is not enough, not enough for applicant to claim complying with development requirements will cost more, need to relax standards so applicant can secure more financial benefit from investment in property, etc.

VARIANCES – Required Findings of Fact:

NCGS 160D-705 (d):

2. *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.*

NOTE(S): 'Peculiar' does not necessarily mean singular or unique condition only experienced by specific property (can be experienced by others) BUT a variance is not appropriate remedy for a condition shared by the 'public' as a whole.

That is an ordinance text amendment!

Please remember: Hardships must be peculiar to the 'property' not 'property owner'.

A variance decision must not be based on the applicant's ability to cover the cost of the hardship.

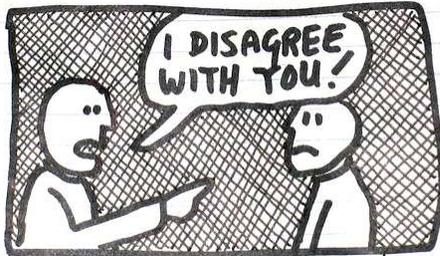
VARIANCES – Required Findings of Fact:

NCGS 160D-705 (d):

3. *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 regulation, such that public safety is secured and substantial justice is achieved.*

Deliberations and 'written' decision must 'spell out' the evidence the Board relied on in making decisions on the case.

Appeal – Staff can be wrong???:



Disagreement with **final binding determination** of the Administrator can be appealed within 30 (calendar) days.

- Can be letter or email (has to say 'final and binding determination' subject to appeal).
- Appeal of subdivision can only be appealed to the court
- Administrator's decision **CANNOT** be overruled by governing board (i.e., City Council) or Planning Board.

Appeal – What is it:

State law and local ordinances grant anyone the right to appeal a staff determination – **this is a right!** While it may not feel this way all the time, its not personal.

- Board can reverse, modify or affirm, in whole or in part, the decision of the Administrator.
- Anyone with standing to contest the Board's decision, may file an appeal with Superior Court.

NOTE: In Affirming, Reversing, or Modifying Staff's determination, Board needs to provide detail on evidence/factors relied on supporting the decision.



Special Use Permit(s):

- Local ordinances identify uses that are permitted/prohibited in general use zoning districts;
- Land uses having off-site impacts necessitating a heightened level of review are special use permits;
- Permit issued once applicant demonstrates:
 - Compliance with general standards,
 - Compliance with site specific/land use standards (i.e. setbacks, buffers, hours of operation, size limitations, distance requirements from sensitive land uses, etc.) imposed by local government, and
 - A lack of competent and material evidence in the record demonstrating the applicant had not met their burden.

Special Use Permit(s) – General Standards:

General standards referenced under State law all special use permit designated land uses must meet:

1. *Does not materially endanger the public health and safety,*
2. *Will not substantially injure the value of adjoining property (or be a public necessity),*
3. *Will be in harmony with or compatible with its neighbors and generally consistent with the comprehensive plan, and*
4. *Will meet and required conditions and specifications.*

Special Use Permit(s) – General Standards:

A word on ‘Harmony’:

- The fact a land use is ‘permitted’ in a general use zoning district (even through the special use permit process) is a legislative finding that it is at least in general ‘harmony’ with the other permitted uses in the district (Harts Book Stores v City of Raleigh – NC Court of Appeals);
- To make a finding it is not in harmony, a Board must have specific evidence in the record as to ‘why’ this is the case for this specific application (i.e., height, bulk, scale, design of the use incompatible with the area).



A Word on Voting:

Variance (Board of Adjustment): A 4/5 vote (including individual findings), is required. This means 4 out of the 5 members must vote in the affirmative to issue variance.

So, we must vote on each finding?
YES! It takes a 4/5 vote on each finding to issue variance.

Special Use Permits and Appeals:
 Simple majority must vote to recommend (Planning Board), approve request (City Council) OR overturn/modify staff determination (Board of Adjustment).

Voting:

- Decision based on number of persons eligible to vote (i.e., excludes vacancies and recusals if no alternates, **but not absences!**)
- Members **must attend** the public hearing to be allowed to vote.
- Local regulations **SHALL** specify voting requirements, or reference to State law.
- Rules of procedure: simply reference either local regulations or State law **BUT** not specify standard.



BOARD OF ADJUSTMENT - DID YOU KNOW ?????

- ✓ **CAN** visit the site of an application; **BUT** members must disclose what information they gleaned from that visit. **DON'T TALK TO ANYONE ABOUT CASE!**
- ✓ Members cannot state opinions on the case outside of the hearing; **BUT** members can ask for technical information about the case from staff. **Disclose during the hearing;**
- ✓ Board has subpoena power under State law;
- ✓ A person can post a sign on their property letting others know that a land use decision was made affecting their property;
- ✓ Board members have no enforcement power in the community. **This is a staff function.**

For more information or additional assistance, we encourage Board members to reach out to your local planning staff and legal representatives.

N-FOCUS INC. Staff is always happy to provide aid, but local staff should be the primary contact.

Thank you for the opportunity to serve you.

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