

ARTICLE VIII. ADMINISTRATION

8.1 Established Board and Staff

The following elected and appointed bodies shall have the various powers and responsibilities in administering this Ordinance and for reviewing and making decisions on applications for development approval, appeals, and amendments to this Ordinance as stated herein:

- A. The Board of Commissioners
- B. The Planning Board
- C. The Board of Adjustment
- D. The Town Manager
- E. The Planning Director
- F. The Technical Review Committee

8.2 Organization

The boards provided by this Ordinance may adopt rules and maintain records in conformance with the following:

- A. Rules of Conduct
A Board may adopt rules necessary to conduct its affairs and to establish Board organization, procedures, and the conduct of its meetings.
- B. Conformance of Rules
The rules adopted by a Board shall be in accordance with North Carolina State law and the provisions of this Ordinance.
- C. Election and Terms of Officers
Each Board shall elect a Chairman and Vice-Chairman from its membership. These officers shall serve for a term of one year, or until the expiration of the term of their appointment to the Board on which they serve.
- D. Record of Meetings
Each Board shall keep accurate minutes of its proceedings and the actions taken in its meetings. When holding quasi-judicial hearings, the Town Board of Commissioners and the Board of Adjustment shall keep a transcript of the meeting and maintain a record of the evidence presented in the course of the hearing.

8.3 Oath of Office

All members appointed to boards under this Article shall, before entering their duties, qualify by taking an oath of office as required by G.S. 153A-26 and G.S. 160A-61.

8.4 The Board of Commissioners

- A. Establishment

The Board of Commissioners is established and composed pursuant to the Town Charter, Article II and the Town Code of Ordinances, Chapter 2, Article II.

B. The Town Board of Commissioners shall have the following duties related to this article:

1. Text Amendments;
2. Zoning Map Amendments/Rezoning;
3. Conditional Zoning;
4. Major Subdivision - Preliminary Plats;
5. Major Site Plans;
6. Special Use Permits;
7. Zoning Vested Rights;
8. Developer Agreements

C. Conflict of Interest

1. A Board member shall not vote on any legislative or quasi-judicial decision regarding a development regulation adopted pursuant to this UDO where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
2. Quasi-Judicial Decisions. A member of any board exercising quasi-judicial functions pursuant to this UDO shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex-parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

D. Board Statements Required

1. Consistency Statement.

In regard to a zoning text or map amendment, once the Board of Commissioners has made a final decision to either adopt or reject the proposal, the Board shall approve a statement describing whether its action is consistent or inconsistent with the Land Use Plan and any other relevant plans having applicability to the proposed amendment.

2. Statement of Reasonableness.

When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Board of Commissioners.

~~— To review and from time to time initiate changes to this article.~~

~~— To decide upon any application or request for amendment to this article or the zoning maps.~~

~~To take any other action not delegated to the Planning Board or Board of Adjustment as the board may deem desirable and necessary to implement the provisions of this article.~~

8.5 The Town Manager:

The Town Manager shall appoint the Planning Director and the Zoning Administrator Administrator and shall have the authority to exercise any and all duties and authorities assigned to them. The Administrator is subject to the power and duties as outlined in the Town Charter, Article IV, Section 4.2

8.6 The Planning Board

A. Establishment

The Planning Board is established and composed pursuant to G.S. § 160D-301 and in accordance with the Town of North Wilkesboro Code of Ordinances, Chapter 2, Article III, Division 2, Sections 2-41 through 2-45. Where a conflict with the Code of Ordinances exists, the regulations contained herein with take precedent.

B. Composition:

The Planning Board of the Town of North Wilkesboro shall consist of eight (8) members appointed by the Town Board of Commissioners. Four (4) of the members shall be from the Town's extraterritorial jurisdiction.

C. Powers & Duties:

The Planning Board shall have the duties prescribed by the ~~Town~~ Board of Commissioners. In summary, those duties related to this article include, but may not be limited to, the following:

1. 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;
2. Facilitate and coordinate citizen engagement and participation in the planning process;
3. Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
4. Advise the council concerning implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D 6-4;
5. Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;
~~To review and make recommendations on any permit application to be heard by the Town Board.~~
6. To update and recommend changes to the Town's Comprehensive Plan.
7. To review and make recommendations on any development application to be heard by the Town Board, including but not limited to:
 - a. Text Amendments;
 - b. Zoning Map Amendments/Rezoning;
 - c. Conditional Zoning;
 - d. Major Subdivision - Preliminary Plats;
 - e. Major Site Plans;
 - f. Establishment of Vested Rights; and

g. Developer Agreements.

D. Conflict of Interest

Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this UDO where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship pursuant to NCGS 160D-109(b).

E. Quorum

A majority of the board membership, excluding vacancies, shall constitute a quorum. A quorum shall be present for the board to take any official action.

F. Voting

The concurring affirmative vote of a majority of the members present and qualified to vote is required to make a recommendation or any other decision in favor of an applicant. Tie votes must be considered recommendations for disapproval.

G. Vote of the Chairman

The Chairman of the Planning Board, or Vice-Chairman serving in that role in their absence or temporary disqualification, shall vote as any other member of the Board.

— Oath of Office.

All members appointed to the Planning Board shall, before entering their duties, qualify by taking an oath of office as required by G.S. 160D-309. Additional procedures are outlined in Town Code Chapter 2 Administration.

8.7 The Board of Adjustment

A. Authority Establishment

Pursuant to General Statute 160D-302, there is hereby created the Board of Adjustment

A. Membership Establishment.

B.

1. The Board of Adjustment of the Town of North Wilkesboro shall consist of eight (8) members; six (6) regular members and two (2) alternates.

a. Four members (three regular members and one alternate member) shall be residents of the Town of North Wilkesboro and be appointed by the Town Board of Commissioners.

b. Four members (three regular members and one alternate member) shall be residents of the town's extraterritorial jurisdiction and be appointed by the Board of Commissioners of Wilkes County.

All members appointed to the Board of Adjustment shall, before entering their duties, qualify by taking an oath of office as required by G.S. 160D-309.

2. Members from within the town limits. The Town Board shall appoint each member and alternate for a term of three years. In appointing the original members or in the filling of

vacancies caused by the expiration of the terms of existing members, the Town Board may appoint certain members for less than three years to the end that thereafter the terms of all members shall not expire at the same time. The expiration date for each term shall be June 30th of the year in which said term is to expire and the term of office of the succeeding member shall begin on July 1st. If the original members are appointed such that their terms of office begin prior to July 1st, such terms of original members shall be extended by the period of time between their appointment and June 30th of the year of their appointment, it being the intent that original members shall serve terms of one to three years plus a period of time between their initial appointments and June 30th of the year of their initial appointment. A member shall be eligible for reappointment at the end of his/her expired term for any position on the board for which he/she is qualified. For purposes of this article, original appointments refer to members and alternates appointed upon first establishment of the Board of Adjustment, and also to members and alternates appointed to newly created seats upon any expansion of the Board of Adjustment.

- 3. Extraterritorial members.** Extraterritorial members shall have all of the obligations and duties of the other members of the Board of Adjustment, including rights to vote on all matters coming before the board. Each extraterritorial member shall be appointed for a period of three years. Expiration dates for each term, initially and thereafter, shall be the June 30th of the year in which said term is to expire and the term of office of the succeeding member shall begin on July 1st; provided further that if the original members are appointed such that their terms of office begin prior to July 1st, such terms of original members shall be extended by the period of time between their appointment and June 30th of the year of their appointment. Eligibility for reappointment shall be determined by the procedures and policies established by the Board of Commissioners of Wilkes County.

~~A. **Meetings.** All meetings of the Board of Adjustment shall be held at a regular place and time and shall be open to the public in accordance to Open Meeting Law, North Carolina General Statute 143-318.12. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact. The board may adopt rules of procedure. Final disposition of permits, appeals or variances shall be recorded in the minutes, indicating the reasons of the board, all of which shall become a part of the public record. In addition, all records of variance appeals and special use permits shall be filed at the Wilkes County Register of Deeds regarding the applicant's property.~~

C. Conflict of Interest

A member of any board exercising quasi-judicial functions pursuant to this UDO shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

D. Powers and Duties.

1. The Board shall hear and decide appeals from an order, denial of a permit or other written decision, or determination made by the ~~Planning Director and/or Zoning Administrator~~ or other administrative official charged with enforcing an ordinance.
2. To hear and grant variances to certain provisions of the Zoning Ordinance in cases where special conditions would make strict and literal interpretation result in the loss of privileges shared by other properties within the same zoning district.

3. To hear and decide on Special Use Permits as assigned by the Zoning Ordinance, Town Code Chapter 16, Subdivisions and the Town's Wireless Communication Ordinance. All conditions placed on Special Use Permits shall have the consent of the applicant/land owner and cannot be conditions that the Town does not have statutory authority over.

E. Meetings. All meetings of the Board of Adjustment shall be held at a regular place and time and shall be open to the public in accordance to Open Meeting Law, North Carolina General Statute 143-318.12. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact. The board may adopt rules of procedure. Final disposition of permits, appeals or variances shall be recorded in the minutes, indicating the reasons of the board, all of which shall become a part of the public record. In addition, all records of variance appeals and special use permits shall be filed at the Wilkes County Register of Deeds regarding the applicant's property.

F. Quorum.

No final action shall be taken on any matter unless a quorum is present. A quorum shall consist of at least five (5) sitting members, entitled to vote on matters brought before the Board, including any alternates seated. The Board shall not vote on any questions related to an appeal of a decision or determination of the Zoning Administrator or an application for a variance or special use permit when there is fewer than five (5) voting members of the Board are present.

G. Voting and conflicts of interest.

The concurring vote of four-fifths of the board shall be necessary to grant a variance. A simple majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members. A member of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Conflicts of interest include where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member; if the member has a close familiar business or associational relationship with an affected person; or if the matter at hand involves the member's own official conduct; or a member having a fixed opinion prior to the hearing that is not susceptible to change. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

Proceedings.

All meetings of the Board of Adjustment shall be open to the public and shall be conducted in accordance with this ordinance and the adopted Rules of Procedures which are kept on file in the office of Planning and Inspections and the Town's website. Presentation of evidence shall be done by the applicant, the Town, and any persons who have standing to appeal the decision shall have the right to participate as a party at the evidentiary hearing. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Minutes shall be kept showing the vote of each member on each question and the absence or failure of any member to vote. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of findings of facts obtained by testimony under oath. A quasi-judicial decision is effective upon filing the written decision with the Secretary to the board and signed by the chair or other duly authorized member of the board. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The Secretary to the Board shall certify that proper notice has been made.

Oaths.

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

Subpoenas.

The Board of Adjustment, through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160D-1402 may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

Standing.

The Board of Adjustment must allow parties with standing to participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments

Re-hearings and appeals from a decision of the Board of Adjustment.

~~Rehearing. An application for a rehearing shall be made in the same manner as provided for an original appeal within a period of thirty days after the board's decision has been filed with the Secretary of the Board or his/her designee. In addition, specific information to enable the Board of Adjustment to determine whether or not there has been a substantial change in facts, evidence, or conditions of the case, shall be presented in writing or graphically. The board shall deny a rehearing, if, in its judgment, such change in facts, evidence or conditions has not been proven. In the event that the board finds that a rehearing is warranted, it shall thereupon proceed in the same manner as for the original hearing.~~

~~Waiting period required. Upon the denial of an original application or adverse ruling on appeal, or upon the denial of an application for which a rehearing has been conducted, whichever is applicable, a similar application may not be filed for a period of ninety days (90) after the date of denial of the original application.~~

~~Appeals.~~

~~Every quasi judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition. [FC1] [KM2]~~

~~A. Planning Director The Planning Director Administrator~~

~~The Planning Director shall have the following powers and duties to be carried out in accordance with these regulations, which include but are not limited to:~~

~~8.8~~

A. Designation

The Town Manager shall appoint an Administrator who shall be duly sworn in and charged with administering and enforcing the provisions of this Ordinance. The Administrator shall administer certain provisions of this chapter as may be required below.

B. Delegation of Authority

The Administrator may designate any staff member to represent the Administrator in any function assigned by this Code but shall remain responsible for any final action.

C. Powers and Duties

In execution of the provisions of this Chapter, the Administrator shall have the following powers and duties:

1. ~~To serve as~~ The Planning Director Administrator acts as staff to the Town Board, the Planning Board, and the Board of Adjustment with regard to their functions under these regulations, and to inform such bodies of all facts and information at their disposal with respect to applications for amendments to the text of these regulations, amendments to the zoning maps and comprehensive plan, appeals, variances, permit requests, and any other matters brought before them under this article.

— The Planning Director shall not make a final decision on an administrative decision required by this ordinance if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on them or if the applicant or other person subject to that decision is a person with whom the he/she has a close familial, business, or other associational

~~relationship. If the Planning Director has a conflict of interest, the decision shall be assigned to the supervisor of him/her or such other staff person may be designated per the ordinance.~~

~~— The Planning Director shall not be financially interested or employed by a business that is financially interested in a development subject to regulation under this ordinance unless he/she is the owner of the land or building involved. The Planning Director shall not engage in any work that is inconsistent with his or her duties or with the interest of the Town, as determined by the Town.~~

2. To maintain the text of these regulations and the zoning maps, including the current and past approved maps.
3. To maintain development review files and other public records related to the administration and enforcement of these regulations.
4. To review applications for zoning permits filed under these regulations.
5. To recommend and comment on proposed amendments to these regulations and to the zoning maps.
6. To establish such rules of procedure and permit application forms as are necessary and proper for the administration of their responsibilities under these regulations.
7. To determine street classifications not otherwise specified on the adopted Town of North Wilkesboro Thoroughfare Plan dated August 1993.

8. Watershed Administration.

~~8.~~ To administer the water supply watershed protection regulations contained herein, including the following additional duties:

- a. To serve as staff to the Planning Board when it is serving in its capacity as the watershed review board.
- ~~b.~~ To submit copies of all amendments upon adoption to the supervisor of the Classification and Standards Branch, Water quality Planning Section, Division of Water Resources.
- ~~c.~~ To keep records of variances granted to the watershed regulations. This record shall be submitted to the Supervisor of the Classification and Standards Branch, Water Planning Section, Division of Water Resources on or before January 1st of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.
- ~~d.~~ To keep records of the Town's utilization of the 10/70 Provision, including any acreage allocated by Wilkes County to North Wilkesboro. Such records shall include the total acres of non-critical area eligible to be developed under the 10/70 Provision, and individual records for each project showing the following information: location, acres, site plan, use, and total allocation of the 10/70.
- ~~e.~~ To monitor land use activities in the watershed to identify situations that might threaten water quality. The Zoning Administrator shall report these situations to the agency with direct regulatory responsibility for these activities.

9. Order discontinuances of illegal uses of land, buildings, or structures; removal of illegal buildings or structures, or of illegal additions, alterations or structural changes; and