

## CHAPTER 153: PLANNING

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### § 153.01 SCOPE OF PLANNING.

Every action and program of every component of the County involves planning, in a broad sense of the term. For the purposes of this Chapter, the term is restricted to activities and programs involving physical, economic, and social development of the County.

### § 153.02 PLANNING AGENCIES.

The following are designated as planning agencies assigned responsibilities under this Chapter: the Board of County Commissioners, the Planning Board, the Planning Department, the Inspection Department, the Airport Authority and the Economic Development Department.

### § 153.03 BOARD OF COUNTY COMMISSIONERS.

In its legislative capacity the Board adopts policies, Chapters, and amendments; appropriates funds; approves acquisition, construction, and disposition of public facilities; and oversees the Land Usage Ordinances of the County. In its quasi-judicial capacity it serves as the Board of Adjustment for the High Impact Land Use Ordinance.

### § 153.04 COUNTY PLANNING BOARD.

The Planning Board of the County is hereby created, in accordance with the following provisions.

(A) Membership and vacancies. The Planning Board shall consist of five members. All members shall be citizens and residents of the County and shall be appointed by the County Commissioners. Two of the initial members shall be appointed for a term of one year; two for two years; and one for three years. Their successors shall be appointed for terms of three years. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term. Members may be removed for cause by the County Commissioners. If any member shall miss three consecutive meetings without good excuse, this shall be deemed cause for dismissal.

(B) Organization, rules, meetings, and records. Within 30 days after appointment, the Planning Board shall meet and elect a Chairperson and create and fill such offices as it may determine. The term of the Chairperson and other officers shall be one year, with eligibility for reelection. The Board shall adopt rules for transaction of its business and shall keep a record of its members' attendance and of its resolutions, discussions, findings and recommendations, which shall be public record. The Board shall hold at least one meeting monthly, and all of its meetings shall be open to the public. For the purpose of taking any official action three members will constitute a quorum.

(C) General Powers and Duties. It shall be the duty of the Planning Board, in general:

(1) To acquire and maintain in current form such basic information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions;

(2) To identify needs and problems growing out of those needs;

(3) To determine objectives to be sought in development of the County;

(4) To establish principles and policies for guiding action in development of the County;

(5) To prepare and from time to time amend and revise a comprehensive and coordinated plan for the physical, social, and economic development of the County;

(6) To prepare and recommend to the County Commissioners ordinances promoting orderly development along lines indicated in the comprehensive plan and advise them concerning proposed amendments of such ordinances;

(7) To determine whether specific proposed developments conform to the principles and requirements of the comprehensive plan for the growth and improvement of the area and ordinances adopted in furtherance of such plan;

(8) To keep the County Commissioners and the general public informed and advised as to these matters;

(9) To perform such quasi-judicial functions as: hearing appeals to administrative decisions and issuing variances; and

(10) To perform any other duties that may lawfully be assigned to it.

(D) Basic studies.

(1) As background for its comprehensive plan and any ordinances it may prepare, the Planning Board may gather maps and aerial photographs of physical features of the County; statistics on past trends and present conditions with respect to population, property values, the economic base of the County, and land use; and such other information as is important or likely to be important in determining the amount, direction, and kind of development to be expected in the area and its various parts.

(2) In addition, the Planning Board may make, cause to be made, or obtain special studies on the location, the condition, and the adequacy of specific facilities, which may include, but are not limited to, studies of housing; commercial and industrial facilities; parks, playgrounds, and other recreational facilities; public and private utilities; and traffic, transportation, and parking facilities.

(3) All County officials shall, upon request, furnish to the Planning Board such available records or information as it may require in its work. The Board or its agents may, in the performance of its official duties, enter upon lands and make examinations or surveys and maintain necessary monuments thereon.

(E) Comprehensive Plan.

(1) The Comprehensive Plan, with the accompanying maps, plats, charts, and descriptive matter, shall be and show the Planning Board's recommendations to the County Commissioners for the development of Ashe County, including, among other things; the general location, character, and extent of streets, bridges, boulevards, parkways, playgrounds, squares, parks, aviation fields, and other public ways, grounds, and open spaces; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes; the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of any of the foregoing ways, buildings, grounds, open spaces, property, utilities, or terminals; and the most desirable pattern of land use within the area, including areas for farming and forestry, for manufacturing and industrial uses, for commercial uses, for recreational uses, for open spaces, and for mixed uses.

(2) The Plan and any Chapters or other measures to effectuate it shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted, and harmonious development of the County that will, in accordance with present and future needs, best promote health, safety, morals, and the general welfare, as well as efficiency and economy in the process of development; including, among other things adequate provision for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities, services, and other public requirements.

(F) Public facilities. The Planning Board shall review with the County Manager and other officials and report its recommendations to the County Commissioners concerning the location and design of all proposed public structures and facilities; the acquisition and disposition of public properties; and the establishment of building lines, mapped street lines, and proposals to change existing streets. It shall also make recommendations concerning other matters referred to it by the County Commissioners.

(G) Miscellaneous Powers and Duties.

(1) The Planning Board may conduct such public surveys as may be required to gather information for the drafting, establishment, and maintenance of the Comprehensive Plan. Before adopting any such Plan, it shall hold at least one public survey thereon.

(2) The Planning Board shall have power to promote public interest in and an understanding of its recommendations, and to that end it may publish and distribute copies of its recommendations and may employ such other means of publicity and education as it may elect.

(3) Members of the Planning Board, when duly authorized by the Board, may attend planning conferences, meetings of planning associations, or hearings on pending planning legislation, and the Planning Board may by formal and affirmative vote authorize payment within the Board's budget of the reasonable traveling expenses incident to such attendance.

(H) Special committees. The Planning Board may from time to time establish special committees to assist it in studying questions and problems. The Board, however, may not delegate to such a committee any of its official powers and duties.

(I) Act as the Board of Adjustment for all Land Usage Ordinances except the High Impact Land Use Ordinance. The Board shall act in accordance with state law. Each hearing shall follow rules applied to quasi-judicial proceedings. Each decision shall be based upon competent, material, and substantial evidence noted in the record of the proceeding. Each decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board.

(1) Notice of hearings. When the Planning Board is assigned to conduct a hearing, a notice shall be mailed to the person or entity whose request is the subject of the hearing, to the owner of the property that is the subject of the hearing if the owner did not initiate the request, to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing, and to any other persons entitled to receive notice as provided by the local development regulation. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. Notice must be mailed at least 10 days, but no more than 25 days, prior to the date of the hearing. Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given

date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

(2) Variance authority. When unnecessary hardship would result from carrying out the strict letter of an ordinance, the Board of Adjustment, by a vote of four-fifths of its membership, may apply a different standard to any of the provisions of the ordinance upon a showing of all of the following:

(a) Unnecessary hardship would result from the strict application of the ordinance. However, it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. However, a hardship resulting from personal circumstances, as well as hardship resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(c) The hardship did not result from actions taken by the applicant or the property owner. However, the act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as self-created hardship.

(d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. Appropriate conditions may be imposed on any allowed variance, provided that the conditions are reasonably related to the variance.

(3) Appeals authority. The Board of Adjustment shall hear and decide appeals from decisions of Planning Department officials charged with enforcement of the development ordinances and may hear appeals arising out of any other ordinance that regulates land use, except the High Impact Land Use Ordinance and are subject to all of the following:

(a) Any person who is directly affected may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the clerk to the Board. The notice of appeal shall state the grounds for appeal.

(b) A County administrative official who has made a decision from which someone wishes to appeal shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first class mail. If notice of decision is sent by mail, it must be presumed it is received on the third business day after it is sent (see G.S. § 160D-405(c)).

(c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(d) The official who made the decision shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. During an

appeal, the official who made the decision (or their successor if the official is no longer employed) must appear as witness to the appeal, pursuant to G.S. § 160D-406. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(e) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order granted by a court.

(f) A member of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate an affected person's constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or an interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. If the majority vote favors allowing the challenged member to participate, reasons for that vote shall be stated as part of the written record of the proceeding.

#### § 153.05 PLANNING DEPARTMENT.

Under the direction of the County Manager, the Planning Department shall assist the County Commissioners, the Planning Board, the Inspections Department, the Airport Authority, and the Economic Development Department with studies, advice, and preparation of plans.

#### § 153.06 INSPECTIONS DEPARTMENT.

The Inspections Department carries out the responsibilities set forth in G.S. Chapter 160D, Article 11, G.S. 160D-1104 with regard to enforcement of the State Building Code and other laws relating to construction. In addition, it enforces the other ordinances listed in G.S. §160D-1104, as well as other ordinances as assigned by the County Commissioners. Normally it is responsible for issuing permits, making inspections of both new construction and existing structures, issuing certificates of compliance, issuing orders to correct violations, initiating legal actions against violators, and keeping records.

#### § 153.07 ECONOMIC DEVELOPMENT DEPARTMENT.

The Economic Development Director formulates economic development projects and promotes economic development of the area.

§ 153.08 SEPARABILITY.

Should any section or provision of this Chapter be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of this Chapter as a whole or any part thereof which is not specifically declared to be unconstitutional or invalid.

§ 153.09 EFFECTIVE DATE.

This ordinance shall become effective \_\_\_\_\_.