

ARTICLE 2: ADMINISTRATIVE AGENCIES

Section 2.1 Board of Commissioners

Section 2.1.1 Duties and Responsibilities

As an elected, legislative body, the Board of Commissioners performs planning and development function as authorized by various enabling provisions of the North Carolina General Statutes. The Board of Commissioners performs the following duties:

- A. Appoints the Planning Board and the Board of Adjustment members;
- B. Upon recommendation by the Planning Board, adopts, implements, and amends a comprehensive land use which establishes long-range goals and objectives regarding future development for the planning jurisdiction;
- C. Adopts, amends, and implements other specialized plans, programs, and policies for functional topics like transportation, open space, and capital improvements;
- D. By ordinance, adopts and amends regulations relating to zoning, subdivision of land, and other private development activities;
- E. Makes final decisions on subdivision plats as provided by the town's Subdivision Regulations; and,
- F. Makes final decisions concerning zoning map amendments (rezoning and text amendments) in accordance to the provisions of Article 3, Development Review Procedures.

Section 2.2 Planning Board

Section 2.2.1 Establishment

- A. The Planning Board is established pursuant to authorization by the North Carolina General Statutes and this ordinance. As an appointed, advisory body, the Planning Board makes recommendations to the Board of Commissioners as authorized by the North Carolina General Statutes and this Ordinance.
- B. The Planning Board shall consist of five members plus any additional members to meet the representation requirements for the Town of Elm City's Extraterritorial Jurisdiction as required in GS 160A-362. The five (5) members shall be citizens living within corporate limits of the town and any additional extraterritorial jurisdiction representation member shall be in accord with the appointment and qualification standards set forth in GS 160A-362.

- C. The members residing within the municipality shall be appointed by the Town of Elm City Board of Commissioners. The original appointments shall be made according to the following terms:
 - 1. One (1) member for one year.
 - 2. Two (2) members for two years.
 - 3. Three (3) members for three years.
- D. The successors to the preceding members shall be appointed for terms of three years.
- E. Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term. Vacancies shall be filled by the legislative body responsible for original appointment.
- F. Faithful attendance at the meetings of the Board is considered a prerequisite for the maintenance of membership on the Board. Failure to attend three consecutive meetings shall be deemed adequate cause for summary removal on the Planning Board by the legislative body.

Section 2.2.2 Organization

- A. Within 30 days after appointment, the Planning Board shall meet and elect a Chairperson and create and fill such officers as it may deem necessary. The term of the Chairperson and other officers shall be one year with eligibility for reelection.
- B. The Planning Board shall adopt rules for procedures and transactions of its business and shall keep a record of its members' attendance and of its discussions, findings, and recommendations, which record shall be a public record.
- C. Except where there are no agenda items for a meeting, the Board shall hold at least one monthly meeting, and all of its meetings shall be open to the public. A quorum shall consist of three members for the purpose of taking any official action required by this chapter. All members of the Board shall have voting power on all matters of business. However, any member who is a party at interest to a matter under consideration by the Board shall declare such interest prior to a vote of the Board on the question, and shall abstain from voting on the question. This provision shall not prohibit such members from participation in discussions of the board on such matter prior to the vote.

Section 2.2.3 Duties and Responsibilities

In general, the Planning Board performs the following duties:

- A. Make or initiate studies of the area within its jurisdiction and surrounding areas to identify and analyze land use issues of importance to the town's planning jurisdiction;
- B. Determine objectives to be sought in the development of the study area and prepare and adopt plans for achieving these objectives;
- C. Prepare and recommend to the Board of Commissioners a comprehensive land use plan and other plans, programs, and policies to achieve community goals and objectives, and advise the legislative body concerning the use and amendment of means for carrying out plans;
- D. Develops and recommends regulatory ordinances, text amendments, and administrative procedures to implement adopted land use plans and policies;
- E. Makes recommendations to the Board of Commissioners concerning requests for amendments to the text of this Ordinance and rezoning requests;
- F. Informs and advises the general public regarding planning and zoning matters through meetings, hearings, advertisements, publications, and other appropriate methods of communication;
- G. Coordinates planning activities with other jurisdictions' planning boards and commissions; and
- H. Exercise any functions in the administration and enforcement of various means for carrying out plans that the legislative body may direct, and performs any other duties assigned by the Board of Commissioners.
- I. The Planning Board may accept, receive, and disburse in furtherance of its functions any funds, grants and services made available by the federal government and its agencies, the state government and its agencies, any local government and its agencies, and any private and civic sources with the approval of the Board of Commissioners.
- J. The Planning Board shall review and make recommendations to the Board of Commissioners upon the extent, location, and design of all public structures and facilities, on the acquisition and disposal of public properties, on the opening, abandonment, widening extension, narrowing or other change to streets and other public ways, on the construction, extension, expansion or abandonment of utilities whether publicly or privately owned. However, in the absence of a recommendation from the Board after the expiration of 30 days from the date on which the question has been submitted in writing to the Board of Commissioners, the legislative body may, if it deems wise, take final action.

- K. The Planning Board with the concurrence of the Board of Commissioners may enter into and carry out contracts with any other city, county, of regional council or planning agency under which it agrees to furnish technical planning assistance to the other local governments or planning agency. The Planning Board with the concurrence of the Board of Commissioners may enter into and carry out contracts with any other city, county, or regional planning agency under which it agrees to pay the other local government or planning agency for technical planning assistance.
- L. The Planning Board may conduct such public hearings as may be required to gather information necessary for the drafting, establishment, and maintenance of the development plan.
- M. 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 deem necessary.
- N. Members or employees of the Planning Board, when duly authorized by the Planning Board, may attend planning conferences or meetings of planning institutes or hearings upon pending planning legislation, and the Planning Board may by formal and affirmative vote, pay, within the Planning Board's budget, the reasonable traveling expenses incidental to such attendance.
- O. The Planning Board shall, annually, submit to the Board of Commissioners a written report of its activities, and analysis of the expenditures to date for the current fiscal year, and its requested budget of funds needed for operation during the ensuing fiscal year. The Planning Board is authorized to appoint such committees and employees, and to authorize such expenditures, as it may see fit, subject to limitations of funds allocated for the Planning Board within the adopted annual Town of Elm City budget and in accord with any expenditure schedule set forth in the budget or approved by the Board of Commissioners.

Section 2.2.4 Advisory Committees

From time to time, the Board of Commissioners may appoint one or more individuals to assist the Planning Board to carry out its planning responsibilities with respect to a particular subject area. Members of such advisory committees shall sit as non-voting members of the Planning Board when such issues are being considered and lend their talents, energies, and expertise to the Planning Board. However, all formal recommendations to the Board of Commissioners shall be made by the Planning Board. Nothing in this section shall prevent the Board of Commissioners from establishing independent advisory groups, committees, or boards to make recommendations on any issue directly to the Board of Commissioners.

Section 2.3 Board of Adjustment

Section 2.3.1 Establishment

- A. The Board of Adjustment is hereby established pursuant to authorization by the North Carolina General Statutes and this ordinance and is created to carry out the powers and duties as provided for in NCGS 160-A-388, this Ordinance and as specified within any other Ordinances of the Town. In carrying out its function, the Board of Adjustments shall be bound by its own adopted rules and procedures and the general requirements of this Ordinance.
- B. The Elm City Board of Commissioners shall provide for the appointment of five members of the Elm City Board of Adjustments. The Board of Commissioners shall also appoint two (2) alternate members who will serve with full privileges only in the absence of a regular member. All these members shall reside within the corporate limits. In accordance with the North Carolina statutory requirements each member shall be appointed for three year terms. In appointing the original members of such board, or in the filling of vacancies caused by the expiration of the terms of existing members, the Board of Commissioners 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.
- C. In addition to the five members and two alternates appointed from within the Town of Elm City, additional members may be required to meet the representation requirements for the Town of Elm City's Extraterritorial Jurisdiction as required in GS 160A-362. If additional members are required, there shall be both the required representational member(s) appointed and an equal number of alternate members appointed in accord with the appointment and qualification standards set forth in GS 160A-362.

Section 2.3.2 Minutes, Written Decisions

- A. The Board shall keep minutes of its proceedings in a book maintained for the purpose of showing the vote of each member upon each question, and, if absent or failing to vote, an indication of such fact. Final disposition of all cases shall be by written decision with the findings of fact stated, and the reasons thereof, all of which shall be a matter of public record.
- B. All written decisions or orders shall be served upon the applicant or appellant and all other persons who make a written request for a copy.
- C. Unless otherwise specified, any order or decision of the Board shall expire and become void if a building permit or certificate for such use is not obtained within two (2) years from the date of said order or decision.

Section 2.3.3 Quorum

No final action on any cases before the Board shall be taken unless a quorum is present. The quorum for the regular members, including regular representative(s) for the extraterritorial jurisdiction as required by GS 160A-362, shall be four fifths of the total regular membership (not including alternates not filling absences of regular members) in order to reverse any order, requirement, decision, or determination of the Zoning Administrator or on decisions regarding variance and special use permit applications. On routine administrative matters, a quorum shall consist of a simple majority of all regular members.

Section 2.3.4 Conduct of Meetings and Hearings

- A. When making a decision while performing its duties, the Board of Adjustment shall follow quasi-judicial procedures. All evidence and testimony shall be presented publicly, and the Board may consider all relevant facts within the personal knowledge of any member of the Board, but such facts should be stated publicly in the hearing.
- B. All meetings of the Board shall be held at a regular time and place, and at such other times and places as the Board may determine in a reasonable effort to process appeals and permit applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this Ordinance.
- C. All meetings and hearings of the Board shall be open to the public. Due notice shall be given to all parties in interest and public hearings shall be advertised when required under the provisions of this Ordinance.
- D. The Zoning Administrator shall begin each request by offering staff information regarding the request and answering any questions regarding the request or the procedure. After the Zoning Administrator's comments, person(s) speaking on behalf of the request and person(s) speaking against the request shall have the opportunity to speak and answer the questions of the Board and the Zoning Administrator.

Section 2.3.5 Voting

- A. The concurring vote of four-fifth (4/5) of the membership of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of any administrative official charged with enforcement of this Ordinance or to decide in favor of the applicant on any application for a variance of this Ordinance or special use permit. For the purpose of determining membership, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members. In other Board business, such as procedural and by-laws matters, a simple majority of those present and voting shall be required.

- B. Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with Section 2.6.4, Section 2.3.3, or has been allowed to withdraw from the meeting in accordance with appropriate standards in subsection C below.
- C. Other provisions affecting voting may be provided in the Board's rules of procedures

Section 2.4 Zoning and Subdivision Administration

Section 2.4.1 Administrative Officer

A. Subdivision Administrator

The Subdivision Administrator shall be appointed by the Board of Commissioners and shall administer the subdivision provisions of this Ordinance. The Subdivision Administrator shall have such other specific powers and duties as are set forth in this Ordinance. The Subdivision Administrator shall serve a staff to the Planning Board and may designate agents to act on her/his behalf with the consent of the Board of Commissioners. The Subdivision Administrator shall have the right to enter property under review at reasonable hours for the purpose of making inspections. All plans, plats and supporting documents to be submitted in connection with the procedures set forth in this Ordinance shall be submitted first to the Subdivision Administrator. The standards to serve as the basis for the size, graphic media, number of copies, information to be shown and other such matters in regards to the maps and documents as required by this Ordinance shall be administered by said Administrator. However, it is recognized that each development is unique, and therefore, the Subdivision Administrator may exercise flexible judgment in requiring less or more information and submittals according to the needs of the particular case.

B. The Zoning Administrator

The Zoning Administrator shall be appointed by the Board of Commissioners and shall administer and enforce the zoning provisions of this Ordinance and is hereby empowered:

1. To issue a Zoning or Sign Permit prior to issuance of a building permit.
2. To collect the designated fees in the administration of this Ordinance.
3. To receive and process all applications for zoning amendment permits and other administrative matters as required by this Ordinance.
4. To investigate violations of the provisions of this Ordinance and enforce actions necessary for correction thereof and to enter upon private property at reasonable times in the carrying out of the duties.

5. Serve as staff to Planning Board and Board of Adjustment.
6. To make and keep all records necessary and appropriate to the office including record of issuance and denial of all Zoning Permit, Special Use Permits, Amendments, Variances, Appeals and receipt of complaints of violations of this Ordinance and action taken on the same.
7. To appoint agents to act on his/her behalf.

Section 2.5 Technical Review Committee

Section 2.5.1 Designation and Purpose

The Zoning Administrator or Subdivision Administrator can designate, assemble and utilize town staff, other agency staff members, or others who have relevant and appropriate technical expertise to serve as a Technical Review Committee (TRC) to review either a site plan or a subdivision plat. The Technical Review Committee could consist of, but not limited to, Public Works, NC Department of Transportation (NCDOT), Soil and Water Conservation, and County Environmental Health, etc.

Section 2.5.2 Responsibilities

Depending on the complexity of the plan or plat, the Technical Review Committee can be convened within a committee meeting, with the Zoning or Subdivision Administrator serving as the chair or members can be requested to submit review comments by mail or other means to the Administrator. Following the review by the TRC, the Zoning or Subdivision Administrator shall forward the findings and recommendations to the appropriate board of authority over the matter and the applicant at least 3 days prior to the board meeting.

Section 2.6 Conflicts Of Interest

Section 2.6.1 Purpose

- A. Service on a board or a commission of the Town of Elm City is a public trust. Members of governmental boards have a duty to represent the public interest fairly and honestly. To protect the integrity of governmental decisions and to promote public confidence in the decisions, no board member shall use his or her position for private gain. Further, board members shall refrain from actions that might reasonably call into question the impartiality and the fairness of those decisions. To that end Section 2.6 establishes minimum standards that board members shall follow to avoid conflicts of interest in governmental decision making.

- B. It is the intention of the governing board that this Ordinance be liberally construed so as to accomplish its purpose of protecting the public against governmental decisions affected by undue conflicts of interest.

Section 2.6.2 Applicability

- A. This action shall apply to the citizen members of all “boards” of the Town of Elm City. For purposes of this section “boards” includes the Town Board of Commissioners, Board of Adjustment, and Planning Board.
- B. This section shall apply to all board members serving on or after the effective date of this Ordinance.

Section 2.6.3 Participation in Decisions Affecting Personal Interests

- A. In order to preserve public confidence in the integrity of the governmental process and to protect the constitutional rights of affected persons to an impartial decision maker, it shall be the duty of the member of every board covered by this section to avoid even the appearance of conflict of interest. Therefore no such member shall vote on, discuss debate, advocate, influence, or otherwise participate before the board on which he or she is a member in any matter that would substantially affect, directly or indirectly, his or her personal financial interests or the financial interests of a member of his or her household. This prohibition includes formal and informal consideration of the matter by the board, whether conducted in public or in private.
- B. This provision does not prohibit participation in legislative and advisory decisions that will have a similar effect on all citizens of Elm City or in which the financial interest is so insignificant or remote that it is unlikely to affect the member’s official actions in any way.

Section 2.6.4 Quasi-Judicial Decisions

- A. Members of boards making quasi-judicial decisions shall disqualify themselves from any matter in which their impartiality might reasonably be questioned. Members shall therefore refrain from all participation in any matter in which they have any financial interest (direct or indirect), a personal bias or prejudice or fixed opinion prior to the hearing, or a personal or financial or associational relationship with any of the parties or the parties’ representatives.
- B. In order to ensure a fair and unbiased hearing on the record of all quasi-judicial matters, board members making quasi-judicial decisions shall refrain from discussion of such matters with the parties thereto other than through the formal hearing process.

- C. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

Section 2.6.5 Legal Opinions and Disqualification

- A. Any official covered by this section may seek an opinion from the town attorney as to the applicability of this section to a particular decision or set of facts. The response to such a request shall be made to the member making the request, and a copy shall be provided to the chair of the body to which the member belongs.
- B. By majority vote, any town board may seek the opinion of the town attorney as to the applicability of this section to a particular decision or set of facts.
- C. If an opinion is received from the town attorney that a member has an impermissible conflict of interest pursuant to this section and the member does not excuse himself or herself from participation, the board may by majority vote (not considering the vote of the member with the alleged conflict) disqualify that member from all participation in the matter involved.

Section 2.6.6 Enforcement

- A. If a member participates in a decision in violation of Section 2.3, the decision of the board shall be void, and the matter shall be reheard without the member's participation. If no objection to the members' participation has been filed with the board making the decisions within ten days of the decisions, this section shall be deemed to have been complied with.
- B. Upon conviction of such offense the member shall forfeit his or her seat on the board, and the member's seat on the board shall be considered vacant as of the date of the final judgment of conviction.