

ARTICLE 2 ADMINISTRATION

2.1 REVIEW AND DECISION-MAKING BODIES

The following review and decision-making bodies shall have the following duties and responsibilities in the administration of this Ordinance, and shall be governed by the following rules.

2.1.1 Town Council

A) ***Powers and Duties***

In addition to any authority granted the Town Council by general or special law, the Town Council shall have the following powers and duties:

- 1) *Review and approve or disapprove.* To review, hear, consider and approve or disapprove:
 - a) The adoption of an ordinance to amend the Official Zoning District Map (Rezoning).
 - b) The adoption of an ordinance to amend the text of this Ordinance (Text amendment).
- 2) *Review and approve, approve with conditions or disapprove.* To review, hear, consider and approve, approve with conditions or disapprove:
 - a) The adoption of an ordinance to amend the Official Zoning District Map, with conditions (Conditional rezoning).
 - b) The adoption of an ordinance approving a PUD-CZ, TND-CZ, or MEC-CZ for zoning district designation.
 - c) Applications for special use permits.
 - d) Applications for site plans.
 - e) Applications for master plans for subdivision.
- 3) *Appoint hearing officers.* To designate and appoint hearing officers to make decisions as the Town Council may deem appropriate.
- 4) *Other.* To take any other action not delegated to the Planning Board; Board of Adjustment; the Parks, Recreation, and Cultural Advisory Committee; the Planning Director; or heads of Town departments, as the Town Council may deem desirable and necessary to implement the provisions of this Ordinance.

B) ***Interest***

Per NCGS 160A-381(d), Town Council members shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Per NCGS 160A-388(e1), Town Council members 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 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 a financial 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.

2.1.2 Planning Board

A) Powers and Duties

The Planning Board shall have the following powers and duties:

- 1) *Review and make recommendations to approve or disapprove.* To review, hear, consider and make recommendations to the Town Council to approve or disapprove:
 - a) The adoption of an ordinance to amend the Official Zoning District Map (Rezoning).
 - b) The adoption of an ordinance to amend the text of this Ordinance (Text amendment).
 - 2) *Review and make recommendations to approve, approve with conditions, or disapprove.* To hear, review, consider and make recommendations to the Town Council to approve, approve with conditions, or disapprove:
 - a) The adoption of an ordinance to amend the Official Zoning District Map, with conditions.
 - b) The adoption of an ordinance approving a PUD-CZ, TND-CZ, or MEC-CZ zoning district designation.
 - c) Applications for special use permits.
 - d) Applications for site plans.
 - e) Applications for master plans for subdivision.
 - 3) *Amendments to Official Zoning District Map and text.* To consider and make recommendations to the Town Council to adopt an ordinance amending the Official Zoning District Map or the text of this Ordinance.
 - 4) *Make special knowledge and expertise available.* To make its special knowledge and expertise available upon written request and authorization of the Town Council to any official, department, board, commission or agency of the Town.
 - 5) *Studies.* To make studies of the resources, possibilities and needs of the Town upon the authorization of the Town Council, and report its findings and recommendations, with reference thereto, to the Town Council.
 - 6) *Recommendations of recognition of Appearance Awards.* To consider and make recommendations on nominees for Residential, Non-Residential, and Tree Appearance Awards to the Town Council.
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B) Membership

- 1) *Number.* The Planning Board shall consist of eight members.
 - 2) *Composition between Town and ETJ.* The composition of membership between the Town and ETJ shall be as follows:
 - a) The composition of the members shall reflect proportional representation between the Town's corporate limits and the ETJ.
 - b) ETJ membership shall be based on the proportionality of population between the Town and the ETJ. This shall be determined by estimating the total population in the ETJ as a percentage of the population in the Town's corporate limits and the ETJ and multiplying this percentage by eight (the total required membership), rounding up to the next whole number. Members appointed from the ETJ shall be residents of the ETJ and citizens of Wake County.
 - c) The balance of the Planning Board's membership shall reside within the Town's corporate limits.
 - d) Membership composition shall be adjusted to reflect changes in the population between the Town and the ETJ every three years.
 - 3) *No elected official or Town employees.* No member of the Town Council or a Town employee shall serve on the Planning Board. To the greatest extent possible, a majority of membership on the Planning Board should consist of persons with special training or experience in planning, real estate and development, architecture, landscape architecture and the law.
 - 4) *Appointment.* Members shall be appointed as follows:
 - a) Regular members of the Planning Board from the ETJ shall be appointed by the Board of County Commissioners of Wake County.
 - b) Regular members of the Planning Board from the Town shall be recommended by the mayor and appointed by the Town Council.
 - 5) *Initial establishment.* At the initial establishment of the Planning Board, three members shall be appointed for a term of three years, three members shall be appointed for a term of two years, and two members shall be appointed for a term of one year. Thereafter, new appointments for terms of three years shall be made. No member of the Planning Board may serve more than three consecutive three year terms.
 - 6) *Removal.* Any member of the Planning Board shall be removed for cause (neglect of duty, malfeasance, misconduct or failure to faithfully attend meetings) by the Town Council upon written charge and after a public hearing.
 - 7) *Filling of vacancy.* Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term by the same method as the original appointment.
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C) **Officers**

- 1) **Chair and vice-chair.** The chair and vice-chair of the Planning Board shall be appointed by the mayor from the members of the Board and confirmed by the Town Council. The term of the chair and vice-chair shall be one year. A past chair or vice-chair may be re-appointed, even though no chair or vice-chair shall serve for more than four consecutive terms. Vacancies within a term shall be filled by the same method as the original appointment. The chair shall decide all points of order on procedure, and shall take such action as shall be necessary to preserve the order and integrity of all proceedings before the Planning Board. In the absence of the chair, the vice-chair shall act as chair and shall have all powers of the chair. In the absence of both the chair and vice-chair, an acting chair shall be selected for that meeting by a simple majority of those members present. The acting chair shall have the authority and responsibilities of the chair for that meeting.
- 2) **Secretary.** The Planning Director shall serve as Secretary of the Planning Board and shall keep minutes of all proceedings. These minutes shall be a summary of all proceedings before the Planning Board, which shall include the vote of all members upon every consideration, and be attested to by the Secretary. The minutes shall be approved by a majority of the Planning Board members voting. In addition, the Secretary shall maintain all records of the Planning Board meetings, hearings, proceedings, and correspondence, as public records in the offices of the Planning Department.

D) **Quorum**

No meeting of the Planning Board shall be called to order, nor may any business be transacted by the Planning Board, without a quorum consisting of the majority of the Planning Board's membership excluding vacant seats being present.

E) **Interest**

Any member who has an interest in a matter under consideration by the Planning Board shall declare such interest prior to the vote of the Board and abstain from voting on the question. The member declaring the interest is not exempted from participation in the discussions of the Board on the matter prior to its vote, except as required by NCGS 160A-388(e1) as stated below.

Per NCGS 160A-388(e1), Planning Board members 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 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 a financial 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.

F) **Staff**

The Planning Department shall be the professional staff to the Planning Board.

G) **Rules of Procedure**

The Planning Board shall, by a majority vote of the entire membership, adopt rules and regulations governing its procedure as it may consider necessary or advisable.

- H) **Meetings**
Meetings of the Planning Board shall be held monthly to consider matters properly before the Board. Additional meetings may be called by the Chair or in writing by five members of the Board. All meetings and public hearings shall be held in the Town in a place accessible and open to the public.

- I) **Compensation**
The members of the Planning Board shall serve without compensation.

2.1.3 Board of Adjustment

- A) **Powers and Duties**
The Board of Adjustment shall have the following powers and duties:
 - 1) **Variance permit.** To hear, review, consider, and approve, approve with conditions, or disapprove applications for variance permits.

 - 2) **Appeals.** To hear, review, consider, and reverse or affirm, in whole or in part, or modify orders, decisions, interpretations, requirements or determinations of the Planning Director.

 - 3) **Appeals on subdivision.** To hear, review and consider on appeal construction plans, final plats, or minor subdivisions for subdivision.

 - 4) **Beneficial use determination.** To review and make determinations on requests for beneficial use determinations.

 - 5) **Text amendments.** To consider and make recommendations to the Town Council to adopt ordinances to amend the text of this Ordinance.

 - 6) **Special knowledge.** To make its special knowledge and expertise available upon written request and authorization of the Town Council to any official, department, board, or commission of the Town.

 - 7) **Studies.** To make studies of the resources, possibilities and needs of the Town upon the authorization of the Town Council and to report its findings and recommendations with reference thereto, from time to time, to the Town Council.

 - B) **Membership**
 - 1) **Number.** The Board of Adjustment shall consist of 5 regular members, and two alternate members.

 - 2) **Composition between Town and ETJ.** The composition of membership between Town and ETJ residents shall be as follows:
 - a) The composition of the regular members shall reflect proportional representation between the Town's corporate limits and the ETJ. ETJ membership shall be based on the proportionality of population between the Town and the ETJ. This shall be determined by estimating the total population in the ETJ as a percentage of the population in the Town's corporate limits and the ETJ and multiplying this percentage by 5 (the total required regular membership), and rounding up to the next whole number. Members appointed from the ETJ shall be residents of the ETJ and citizens of Wake County.
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- b) The balance of the Board of Adjustment's membership shall reside within the Town's corporate limits.
 - c) Membership composition shall be adjusted to reflect changes in the population between the Town and the ETJ every three years.
 - d) The alternate members shall be residents of the Town.
- 3) *No elected officials or Town employees.* No member of the Town Council or a Town employee shall serve on the Board of Adjustment.
- 4) *Appointment.* Members shall be appointed as follows:
- a) Regular members of the Board of Adjustment from the ETJ shall be appointed by the Board of County Commissioners of Wake County.
 - b) Regular members of the Board of Adjustment from the Town shall be recommended by the mayor and appointed by the Town Council.
 - c) Alternate members of the Board of Adjustment shall be recommended by the mayor and appointed by the Town Council.
- 5) *Term.* The term of office of each member appointed shall be for three years. No member of the Board of Adjustment may serve more than three consecutive three year terms.
- 6) *Removal.* Members shall be removed for cause by the Town Council on written charges, and after a public hearing.
- 7) *Filling vacancy.* Any vacancy on the Board of Adjustment shall be filled for the unexpired term in the same manner as in the case of the original appointment.
- 8) *Alternate members.* The alternate members shall consist of a first alternate member and a second alternate member. The alternate members shall vote in the event any member is temporarily unable to vote due to absence or conflict of interest in a case, or for any other cause. The first alternate member shall have priority to replace the first regular member that is absent or unable to vote. The second alternate member shall have priority to replace the second regular member that is absent or unable to vote.

C) **Officers**

- 1) *Chair and vice-chair.* The chair and vice-chair of the Board of Adjustment shall be appointed by the mayor from the members of the Board. The term of the chair and vice-chair shall be one year. A past chair or vice-chair may be re-appointed, even though no chair or vice-chair shall serve for more than four consecutive terms. Vacancies within a term shall be filled by the same method as the original appointment. The chair shall decide all points of order on procedure, and shall take such action as shall be necessary to preserve the order and integrity of all proceedings before the Board of Adjustment. The chair, on behalf of the Board of Adjustment, is authorized to subpoena witnesses and compel the production of evidence, and to administer oaths to witnesses before the
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Board. In the absence of the chair, the vice-chair shall act as chair and shall have all powers of the chair. In the absence of both the chair and vice-chair, an acting chair shall be selected for that meeting by a simple majority of those members present. The acting chair shall have the authority and responsibilities of the chair for that meeting.

- 2) **Secretary.** The Planning Director shall serve as Secretary for the Board of Adjustment. The Secretary shall keep minutes of all meetings of the Board of Adjustment, and a record of all resolutions, findings and determinations of the Board of Adjustment. These minutes shall be a summary of all proceedings before the Board of Adjustment, which shall include the vote of all members upon every consideration, and be attested to by the Secretary, and the final disposition of all appeals indicating the vote of the Board of Adjustment and the reasons for the vote. The minutes shall also indicate whether a member is absent or disqualified from voting. The minutes shall be approved by a majority of the Board of Adjustment members voting. In addition, the Secretary shall maintain all records of Board of Adjustment meetings, hearings, proceedings, and correspondence, as public records in the offices of the Planning Department.

- D) **Quorum**
No meeting of the Board of Adjustment shall be called to order, nor may any business be transacted by the Board of Adjustment, without a quorum consisting of at least three members (either regular or alternate) being present.

A decision to reverse a decision, action, or interpretation of the Planning Director, or any approval of a variance permit shall be disallowed, unless the concurring vote of four-fifths of the members of the Board of Adjustment shall favor reversal of the decision or interpretation, or approval of the variance permit. Per NCGS 160A-388(e), 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.

- E) **Interest**
Any member who has an interest in a matter under consideration by the Board of Adjustment shall declare such interest prior to the vote of the Board and abstain from voting on the question. The member declaring the interest is not exempted from participation in the discussions of the Board on the matter prior to its vote, except as required by NCGS 160A-388(e1) as stated below.

Per NCGS 160A-388(e1), Board of Adjustment members 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 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 a financial 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.

- F) **Rules of Procedure**
The Board of Adjustment shall, by a majority vote of its entire membership, adopt rules and regulations governing its procedure, as it may consider necessary or advisable.
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G) **Meetings**
Meetings of the Board of Adjustment shall be held once every two months, or on an as needed basis. All meetings and public hearings shall be held in the Town in a place accessible and open to the public.

H) **Compensation**
The members of the Board of Adjustment shall serve without compensation.

2.1.4 Reserved for Future Use

2.1.5 Parks, Recreation, and Cultural Resources Advisory Commission

A) **Powers and Duties**
The Parks, Recreation, and Cultural Resources Advisory Commission shall have the following powers and duties under the provisions of this Ordinance:

- 1) *Recommend land for parks and playgrounds.* Recommend to the mayor and Town Council land to be set apart for use as parks, playgrounds, recreational centers, water areas, or other recreational areas and structures.
- 2) *Review master subdivision plans and site plans.* Review master subdivision plans and residential site plans and make recommendations about whether the master subdivision plan complies with the appropriate review standards and whether a fee-in-lieu for parks shall be provided or dedication of a park or greenway should be made.
- 3) *Recommendations to Mayor and Town Council.* Recommend to the mayor and Town Council regulatory control, rules and measures for use of Town-owned or controlled recreational facilities.
- 4) *Consult with Planning Board.* Consult with the Planning Board on all matters pertaining to recreational planning for the community.

B) **Rules Governing Commission**
The professional staff of the Commission shall be the Parks, Recreation, and Cultural Resources Department. The rules governing the other responsibilities and procedures of the Parks, Recreation, and Cultural Resources Advisory Commission are established in Sec. 15-4, Code of Ordinances, Town of Apex, North Carolina.

2.1.6 Planning Director

A) **Powers and Duties**
In addition to the jurisdiction, authority, and duties that may be conferred upon the Planning Director by general or special law, the Planning Director or designee shall have the following jurisdiction, powers, and duties:

- 1) *Consider and approve, approve with conditions or disapprove.* To consider and approve, approve with conditions, or disapprove:
 - a) Applications for administrative approvals of site plan exemptions.
 - b) Applications for final plats for subdivision.
 - c) Applications for minor subdivision.
 - d) Applications for administrative adjustments.
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- e) Applications for temporary use permits.
 - f) Applications for certificates of zoning compliance.
 - g) Applications for home occupation permits.
 - h) Master sign plans.
 - i) Sign permits (temporary and permanent).
 - j) Tree Protection Fencing permit.
 - k) Tree Removal permit.
 - l) Pond Drainage permit.
- 2) *Text amendments.* To consider and make recommendations to the Town Council to adopt ordinances to amend the text of this Ordinance and the Official Zoning District Map.
 - 3) *Interpretations.* To render interpretations of all provisions of this Ordinance, including interpretations of the text of this Ordinance; interpretation of the zoning district boundaries; and determinations of whether an unspecified use falls within a use classification or use group allowed in a zoning district.
 - 4) *Administer Ordinance.* To establish application requirements and schedules for review of applications and appeals, to review and make recommendations to the Planning Board, Board of Adjustment and/or Town Council on all applications for development considered by those boards, and take any other actions necessary to administer the provisions of this Ordinance.
 - 5) *Provide expertise and technical assistance.* To provide expertise and technical assistance to the Town Council, Planning Board, and Board of Adjustment upon request.

2.1.7 Technical Review Committee

A) Powers and Duties

The Technical Review Committee (TRC) shall have the following powers and duties:

- 1) *Minor site plan.* To review, consider, and make recommendations to approve, approve with conditions, or disapprove applications for minor site plans.
 - 2) *PUD-CZ, TND-CZ, or MEC-CZ rezoning, major site plan, residential master subdivision plan, and non-residential master subdivision plan.* To review, consider, and make recommendations to approve, approve with conditions, or disapprove applications for PUD-CZ, TND-CZ, or MEC-CZ rezoning, major site plan, residential master subdivision plan, and non-residential master subdivision plan.
 - 3) *Construction plans.* To consider and approve, approve with conditions, or disapprove applications for construction plans for subdivision, site plans, and other related construction plans.
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- B) **Membership**
The TRC shall consist of a staff member, designated by the department head, from each of the following departments: Planning, Public Works, Construction Management, Parks and Recreation, Police and Fire.
- C) **Chair**
The Planning Director or the Planning Director's designee shall serve as the Chair of the TRC. The Chair shall be in charge of all proceedings before the TRC and shall take such action as shall be necessary to procure order and the integrity of proceedings before the TRC.
- D) **Rules of Procedure**
The TRC shall, by a majority vote of the entire membership, adopt rules and regulations governing its procedure as it may consider necessary or advisable.

2.1.8 Hearing Officer

- A) **Creation and Appointment**
The Town Council shall confirm one or more hearing officers to hear and consider such matters as may be required to be conducted by a hearing officer under any provision of this Ordinance or as may be determined to be appropriate. Such hearing officer(s) shall serve at the pleasure of the mayor and Town Council for such period as is determined by the mayor and Town Council. Such hearing officers shall be compensated at a rate to be determined by the Town Council. Whoever shall accept an appointment as a hearing officer shall, for a period of one year from the date of termination as holder of such office, not act as agent or attorney in any proceeding, application or other matter before any decision-making body of the Town in any matter involving land that was the subject of a proceeding which was pending during the time served as a hearing officer.
 - B) **Minimum Qualifications**
A hearing officer shall have the following minimum qualifications:
 - 1) *Professional experience.* Demonstrated knowledge of administrative, environmental and land use planning and law and procedures.
 - 2) *No appointive or elective office.* Hold no other appointive or elective public office or position in the Town during the period of appointment.
 - C) **Powers and Duties**
A hearing officer shall have the following duties:
 - 1) *Beneficial Use Determination.* To conduct hearings on Appeals for Beneficial Use Determinations and recommend approval with conditions or disapproval to the Town Council;
 - 2) *Subpoenas, production of documents and oaths.* To issue subpoenas to compel the attendance of witnesses and production of documents, and to administer oaths to witnesses appearing at hearings.
 - 3) *Other.* To perform such other tasks as the Town Council may assign.
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