

# CHAPTER 16: PLANNING BOARD

## **16.1: AUTHORITY AND RESPONSIBILITY**

The Planning Board shall have the following duties and responsibilities:

- To hear and decide appeals from any order, decision, determination, or interpretation made by the Zoning Administrator pursuant to or regarding these regulations.
- To hear and decide petitions for variances from the requirements of these regulations.
- To make an interpretation of any portion of this Ordinance.
- To rule on the classifications of uses not permitted by right or permitted with conditions per Section 3.6 Uses Not Expressly Permitted or Conditional.
- To change the use of, or expand certain nonconformities.
- To allow temporary uses in zoning districts where such uses are not normally permitted per Section 3.5.2 Temporary Manufactured Home Use.
- To make recommendations on all Sketch Plats for major subdivisions per Chapter 12, Requests for Site Plan Approval and Vesting per Chapter 12, and all Amendments per Chapter 18.
- To serve as the Watershed Review Board and rule on all petitions in accordance with the procedures set forth in Chapter 11.
- To render opinions and make recommendations on all issues and petitions related to the Land Development Code, Land Development Map, Land Use Plan, and other land use plans which may be adopted from time to time which require approval by the Town of Cornelius Board of Commissioners.

## **16.2: MEMBERSHIP**

In accordance with G.S. 160A-362, the Planning Board shall consist of a total of seven (7) members.

The representation on the Planning Board shall be proportional based on population for residents of the extraterritorial area under the authority of this Code. Representation shall be provided by appointing at least one (1) resident of the entire extraterritorial jurisdiction. The total membership of the Planning Board shall be proportional to the population of residents of the Town and residents in the ETJ area.

Representatives from within the Town limits shall be appointed by the Cornelius Board of Commissioners. Representatives from the ETJ area shall be appointed by the Mecklenburg County Board of Commissioners.

## **16.3: MEETINGS, HEARINGS & PROCEDURES**

- A. All meetings and hearings shall be open to the public and shall be conducted in accordance with the procedure set forth in these regulations and rules of procedure adopted by the Planning Board. Such rules of procedures may be amended by the Planning Board membership.
- B. Any rules of procedure adopted by the Planning Board shall be kept on file at the offices of the Planning Director and shall be made available to the public at any meeting or hearing of the Planning Board.

## **16.4: STAFF**

The Planning Director or his/her designee shall serve as staff to the Planning Board and shall provide technical assistance to the Planning Board as requested.



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### **16.5: APPEALS**

An appeal may be initiated by any aggrieved party or by any officer or the Board of the Town of Cornelius. The Planning Board shall hear and decide appeals, decisions of administrative officials charged with enforcement of the land development code, and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

- A. Any person who has standing under G. S. 160A-393(d), or the Town may appeal a decision to the Board. An appeal is taken by filing a Notice of Appeal with the Town Clerk. The Notice of Appeal shall state the grounds for the appeal.
- B. The official who made the decision 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.
- 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. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision.
- E. 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. 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.
- F. 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 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, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.



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- G. Subject to the provisions of subdivision (6) of this subsection, the Board shall hear and decide the appeal within a reasonable time.
- H. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision.
- I. When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G. S. 160A-393(k).
- J. The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolutions.

### **16.6: VARIANCES**

- A. Filing a Variance Petition — A petition for variance, in the form prescribed by the Board, shall be filed with the Town Planning Director or designated administrator, accompanied by a nonrefundable filing fee as established by the Town Board and a list of adjoining properties including tax parcel numbers and the name and address of each owner.
- B. Standards for Granting a Variance – When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board shall vary any of the provisions of the ordinance upon a showing of all of the following:
  - 1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - 2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
  - 3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
  - 4. 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.
- C. No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any



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other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

### **16.7: NONCONFORMITIES**

The Planning Board shall hear and decide appeals from any land owner (i) to make a change in use of a nonconforming use to a less-intense nonconforming use; (ii) to make a change in location of a nonconforming use of land to another location on the same property; or (iii) allow the replacement of a nonconforming use, or (iv) allow a nonconforming manufactured home to remain on the same lot as a principal structure, if it is occupied by a blood relative of the owner-occupant of the principal structure.

- A. The Planning Board may only grant a change in a nonconforming use or replacement of a nonconforming structure which has been destroyed after having first held a public hearing and having determined that:
  1. (i) Said change will be more suitable and appropriate for the lot(s) on which it is located than the existing situation, and (ii) that the proposed change will have a less harmful effect than the existing situation on the properties surrounding the lot(s) in question, and
  2. That the decision to grant the change will be in harmony with the general purpose and intent of this Ordinance and will not be injurious to the neighborhood or otherwise be detrimental to the public welfare.
- B. The Planning Board, in granting said changes, may prescribe appropriate conditions and safeguards in conformity with this Ordinance in order to conform with Sections 16.8(A) 1 & 2. Violation of such conditions and safeguards when made a part of the terms upon which the change was granted, shall be deemed a violation of this Ordinance and shall be punishable as prescribed in Section 14.6 of this Ordinance.
- C. The Planning Board, in granting a change in a nonconformity pursuant to this Section may prescribe appropriate conditions and safeguards in conformity with this Ordinance in order to conform with this Section. Violation of such conditions and safeguards when made a part of the terms upon which the change was granted, shall be deemed a violation of this Ordinance and shall be punishable as prescribed in Section 14.6 of this Ordinance.

### **16.8: TEMPORARY USE PERMITS**

The Planning Board may grant an extension of a temporary use permit for a manufactured house (see Section 3.5.2) for a period no longer than nine (9) months if the Board determines that construction is proceeding in a diligent manner; the granting of such permit of the manufactured home on the site does not have a negative effect on abutting properties.

### **16.9: ACTIONS BY THE BOARD**

- A. Voting— The concurring vote of a 4/ 5ths super majority 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 purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial



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matter 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.

- B. A member of the Board 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. 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.
- C. Quasi-Judicial Decisions— The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial 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. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board, or such other office or official as the ordinance specifies. 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 person required to provide notice shall certify that proper notice has been made.
- D. Oaths — The Chair of the Board or any member acting as Chair and the Clerk to the Board 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, willfully swears falsely is guilty of a Class 1 misdemeanor.
- E. Subpoenas — The Board 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. 160A- 393( d) 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. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board 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.

### **16.10: EFFECT OF APPROVAL OR MODIFICATION OF DECISION**

After the Board approves a variance, or reverses or modifies an order, decision, determination, or interpretation of an administrative officer, the appellant or petitioner shall be responsible for a building permit and/or certificate of occupancy, as applicable, in order to proceed with the development of the subject property. All orders, decisions, determinations, and interpretations made by administrative



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officers under those procedures shall be consistent with the variance, reversal, or modification granted to the appellant or petitioner by the Board.

### **16.11 REHEARING**

The Board shall refuse to hear an appeal or variance petition which has been previously denied unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

### **16.12 APPEAL FROM BOARD DECISION**

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G. S. 160A-393. 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 in accordance with subsection 11. 3. 2( h)( 3). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

