



**Rowan County Planning and Development Department**

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**MEMORANDUM**

To: Chairman Foster Leonard and Planning Board members  
From: Ed Muire, Rowan County Planning Director  
RE: **ZTA 02-23 Courtesy Hearing**  
Date: June 15, 2023

**REQUEST**

**ZTA 02-23** is a Staff initiated text amendment that will transfer Board of Adjustment duties to the Planning Board.

**BACKGROUND**

Although statutory allowance (NCGS 160D-302 attached) for a planning board to serve as a board of adjustment has existed for years, many local governments maintained separate boards until the legislature authorized planning boards to issue special use permits. In this capacity, the planning board could operate in a quasi-judicial capacity without having to reconvene as a board of adjustment. Whether this proved to be the impetus or not, many local governments eliminated their board of adjustment or merged it with the planning board.

Respondents to an inquiry (below) of surrounding municipalities and counties indicates almost an even split between those that have planning board serve as board of adjustment and those that still have separate boards.

<b>County / Municipality</b>	<b>Planning Board serves as Board of Adjustment</b>
<b>Cabarrus County</b>	<b>Yes</b>
<b>China Grove</b>	<b>Yes</b>
<b>Cleveland</b>	<b>Yes</b>
<b>Davidson County</b>	<b>No</b>
<b>Faith</b>	<b>No</b>
<b>Iredell County</b>	<b>No</b>
<b>Landis</b>	<b>Yes</b>
<b>Randolph County</b>	<b>Yes</b>
<b>Rockwell</b>	<b>No</b>
<b>Salisbury</b>	<b>Yes</b>
<b>Spencer</b>	<b>Yes</b>
<b>Stanly County</b>	<b>No</b>

## **RATIONALE**

Upon adoption of countywide zoning in 1998, the County's first seated Board of Adjustment was the County Commission. Within several years the Commission transferred these duties to an appointed citizen board and has operated in that manner since. During the last decade, it has not been uncommon for the County's Board of Adjustment to not have business or cases for many months and now tends to meet based on need. This has resulted in the typical meeting date being moved around on the calendar which can result in conflicts with members being available. Given its sparse workload, the board has often had only enough members rostered to conduct business which is a burden on members as well as applicants seeking timely hearings or decisions.

Transitioning these duties to the Planning Board will accomplish several things:

1. Boards of Adjustment (BoA) are required to have at least five (5) members to conduct business and its customary for alternates to be appointed to serve in the case of conflicts of interest, absence, etc. The Planning Board has nine (9) members, which can satisfy this requirement for seating the BoA and appointing alternates.
2. The BoA meeting date will be the same as the Planning Board when needed, i.e. fourth Monday of every month.
3. Training for quasi-judicial decision-making (BoA) may occur on a more regular basis as do review of legislative decisions (Planning Board).

Although this proposed text amendment authorizes the Planning Board to serve as the BoA, the Planning Board cannot make BoA decisions as the Planning Board, rather it must take action to convene as the BoA.

## **CONTENT**

Proposed amendments to transition these duties are relatively few and are contained in the Planning and Development Ordinance (Chapter 17 of the Rowan County Code of Ordinances) and Zoning Ordinance (Chapter 21 of the Rowan County Code of Ordinances). Specifically, Section 17-28 Powers and Duties, includes a new item (7) authorizing the Planning Board to make quasi-judicial decisions when acting as the BoA and Section 21-313(c) is amended to reflect composition of the BoA is subject to Planning Board appointment criteria by the County Commission.

New text in the Staff proposed amendments to Section 17-28 (Attachment 1) and Section 21-313 (Attachment 2) are visible as ***bold italicized text***, deletions as ~~striketrough text~~ and existing text as black.

## **PROCEDURAL REQUIREMENTS**

As provided in Section 21-361(b) of the Zoning Ordinance, the Planning Board must provide a recommendation and statement to the Commission as to whether the proposed text amendment is consistent with any adopted plans, official policies or any other matters the Planning Board deemed relevant in its consideration and developing a recommendation.

The Planning Board may use the accompanying Statements Worksheet in developing a Statement of Consistency for **ZTA 02-23**.

**§ 160D-302. Boards of adjustment.**

(a) Composition. – A local government may by ordinance provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three-year terms. In appointing the original members or in the filling of vacancies caused by the expiration of the terms of existing members, the governing board may appoint certain members for less than three years so that the terms of all members shall not expire at the same time. The governing board may appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member.

(b) Duties. – The board shall hear and decide all matters upon which it is required to pass under any statute or development regulation adopted under this Chapter. The ordinance may designate a planning board or governing board to perform any of the duties of a board of adjustment in addition to its other duties and may create and designate specialized boards to hear technical appeals. If any board other than the board of adjustment is assigned decision-making authority for any quasi-judicial matter, that board shall comply with all of the procedures and the process applicable to a board of adjustment in making quasi-judicial decisions. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

## Chapter 17 PLANNING AND DEVELOPMENT<sup>1</sup>

### ARTICLE I. IN GENERAL

**Secs. 17-1—17-25. Reserved.**

### ARTICLE II. PLANNING BOARD<sup>2</sup>

**Sec. 17-26. Establishment, jurisdiction.**

There is hereby established under the authority of G.S. 160D-301 *and* 160D-302 a board to be known as the Rowan County Planning Board whose jurisdiction shall include the area within the boundaries of the county.

(Ord. of 4-4-77, § 1(1); Amend. of 2-5-07; Amend. of 2-18-08; Amend. of 6-21-21)

**Sec. 17-27. Appointment and terms of planning board members.**

- (a) The planning board shall be composed of nine (9) members who shall be residents of the county.
- (b) Planning board members shall be appointed for three-year staggered terms, but members may continue to serve until their successors have been appointed. All terms of office shall end on the thirty-first day of December of a year. Any terms not ending on December 31 shall be extended to December 31 of that year from and after April 3, 1989. Initially, four (4) members shall be appointed for three-year terms, four (4) members shall be appointed for two-year terms, and three (3) members shall be appointed for one-year terms. Current members who have three-year, two-year or one-year terms remaining shall continue to serve with additional members being appointed to establish the staggered terms of the planning board membership. Vacancies may be filled for the unexpired term only.
- (c) Planning board members may be removed by the board of commissioners at any time for failure to attend three (3) consecutive meetings or for failure to attend thirty (30) percent or more of the meetings within any twelve-month period or for any other good cause related to performance of duties. Upon request of the member proposed for removal, the board of county commissioners shall hold a hearing on the removal before it becomes effective.

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<sup>1</sup>Cross reference(s)—Administration, Ch. 2; buildings, Ch. 7; floodway; floodway fringe, Ch. 9; historic landmarks, Ch. 9.5; mobile homes, Ch. 13; parks and recreation, Ch. 16; soil erosion and sedimentation, Ch. 18; streets, sidewalks and other public places, Ch. 19.5; zoning, Ch. 21.

State law reference(s)—Power of county to levy taxes for planning and regulation of development, G.S. 153A-149(c)(26); planning and regulation of development, G.S. 153A-320 et seq.; regional planning commissions, G.S. 153A-391 et seq.; local development, G.S. 158-7.1 et seq.

<sup>2</sup>State law reference(s)—Planning agency, G.S. 153A-321 et seq.

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- (d) If a planning board member moves outside the county, that shall constitute a resignation from the planning board, effective upon the date a replacement is appointed by the board of commissioners.

(Ord. of 4-4-77, § 1(2); Ord. of 4-3-89, § 1; Amend. of 2-5-07; Amend. of 2-18-08; Amend. of 11-19-12)

### **Sec. 17-28. Powers and duties.**

It shall be the duty of the county planning board to:

- (1) Prepare, review, maintain, monitor, and periodically update and recommend to the board of commissioners a comprehensive plan, and such other plans as deemed appropriate consistent with G.S. 160D-501, and conduct ongoing research, data collection, mapping, and analysis;
- (2) Facilitate and coordinate citizen engagement and participation in the planning process;
- (3) Develop and recommend policies, ordinances, development regulations, administrative procedures and other means for carrying out plans in a coordinated and efficient manner;
- (4) Advise the board of commissioners concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments;
- (5) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct; and
- (6) Perform any other related duties that the board of commissioners may direct.
- (7) Receive and decide appeal and variance requests when functioning in a quasi-judicial capacity as the Board of Adjustment.**

(Ord. of 4-4-77, § 1(3); Amend. of 2-5-07; Amend. of 2-18-08; Amend. of 6-21-21)

### **Sec. 17-29. Grants, contracts, and technical assistance.**

- (a) The county may accept, receive and disburse in furtherance of its functions funds, grants, and services made available by the federal government or its agencies, the state government or its agencies, any local government or its agencies, and private or civic sources. The county may enter into and carry out contracts with the state or federal governments or any agencies thereof under which financial or other planning assistance is made available to the county and may agree to and comply with any reasonable conditions that are imposed upon the assistance.
- (b) The county may enter into and carry out contracts with any other county, city, regional council or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. The county may enter into and carry out contracts with any other county, city, regional council or planning agency under which it agrees to pay the other local government for technical planning assistance.
- (c) The county may make any appropriations that may be necessary to carry out an activity or contract authorized by G.S. **160D-302 and** 160D-502 or to support, and compensate members of the planning board.

(Ord. of 4-4-77, § 1(4); Amend. of 2-5-07; Amend. of 2-18-08; Amend. of 6-21-21)

Attachment 2

**Sec. 21-312. Planning board.**

(a) *Authority.* The planning board is an appointed, advisory body making recommendations to the board of commissioners as generally authorized by G.S. 160D-301.

(b) *Duties and responsibilities.* The Planning Board shall carry out duties as provided by chapter 17 and 21 of the Rowan County Code of Ordinances and others as directed by the board of commissioners.

(c) *Composition.* The Board of Commissioners shall appoint members to the Planning Board as provided by Chapter 17 of the Rowan County Code of Ordinances.

(d) *Meetings and procedure.* Unless otherwise amended by the Board of Commissioners, the Planning Board shall maintain its own rules of procedure for the transaction of official business consistent with this chapter and G.S. 160D. All meetings shall be open to the public. The Planning Board shall keep a written public record of member attendance and decisions.

(e) *Oath of office.* Prior to performing duties referenced in subsection (b), new and reappointed members shall take an oath of office referenced in G.S. 11-7 and 153A-026.

(Ord. of 1-19-98, § XIII; Amend. of 6-21-21)

**Sec. 21-313. Board of adjustment (BOA).**

(a) *Authority.* As an appointed, quasi-judicial body, the BOA hears and decides appeals and variance requests as authorized by G.S. 160D-405 and 705.

(b) *Duties and responsibilities.* The BOA shall carry out duties expressly provided in article XIII or as directed by the board of commissioners.

(c) *Composition.* ~~The board of commissioners shall appoint members to the BOA as provided by G.S. 160D-302.~~ **Subject to appointment pursuant to 160D-302 and Section 21-312(c) herein, the Planning Board shall perform the duties and responsibilities of the Board of Adjustment.**

(d) *Meetings and procedure.* Unless otherwise amended by the board of commissioners, the BOA shall maintain its own rules of procedure for the transaction of official business consistent with this chapter and G.S. 160D. All meetings shall be open to the public. The BOA shall keep a written public record of member attendance, findings and decisions.

(e) *Oath of office.* Prior to performing duties referenced in subsection (b), new and reappointed members shall take an oath of office referenced in G.S. 11-7 and 153A-026.

(Ord. of 1-19-98, § XIII; Amend. of 4-21-14; Amend. of 6-21-21)

## CONSISTENCY WORKSHEET

**CONSISTENCY QUESTION** — *"Is the proposed amendment consistent with any adopted plan". Consider the future land use map and if applicable.*

**REFERENCE SOURCES**

YES     NO    Is the request consistent with applicable plans?  
 Example: \_\_\_\_\_  
 Example: \_\_\_\_\_

Staff Report & Land Use Plans

YES     NO     N/A    Is the request consistent with any other adopted plans?  
 \_\_\_\_\_

If applicable, refer to Staff Report

YES     NO    Is the request consistent with the zoning districts purpose and intent?  
 Example: \_\_\_\_\_  
 Example: \_\_\_\_\_

Sec. 21-32 of ZO

YES     NO    Is the request reasonable and in the public interest?  
 Example: \_\_\_\_\_  
 Example: \_\_\_\_\_

Staff Report, Land Use Plans, Ordinances, Public Comment

**STATEMENT DEVELOPMENT** — *"Prior to adopting or rejecting any text amendment, one of the following statements shall be adopted:"*

**1** " \_\_\_\_\_ is consistent with the \_\_\_\_\_ Land Use Plan(s) and reasonable / appropriate based on the following..."

**2** " \_\_\_\_\_ is not consistent with the \_\_\_\_\_ Land Use Plan(s) and reasonable / appropriate based on the following..."

**3** " \_\_\_\_\_ is reasonable, appropriate, and necessary to meet the development needs of Rowan County not previously envisioned by the \_\_\_\_\_ Land Use Plan(s)...". Furthermore, the adoption of \_\_\_\_\_ is deemed an amendment to the \_\_\_\_\_ Land Use Plan(s)

- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_