

An aerial photograph of a river winding through a marshy landscape. The river is dark and reflects the sky. The surrounding land is a mix of green marsh and brown trees. In the background, there are some buildings and a parking lot. The bottom of the image has a solid blue horizontal bar.

Planning Board Training for the Town of Shallotte

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LOCAL GOVERNMENT SERVICES DIRECTOR

CAPE FEAR COUNCIL OF GOVERNMENTS

Legal Context

- Local governments are creatures of the state and have no inherent powers.
- In “home rule” states, local governments have broad authority - state legislatures have delegated any powers that do not conflict with the state or federal constitution.
- In “Dillon’s Rule” states, local governments only have those powers expressly granted to them by their legislatures.

Planning Board Basics

- Terminology: Planning Board a.k.a. Planning Commission, Zoning Board, Planning & Zoning Board, etc.
- A local government may establish a planning board in order to enact zoning powers (§ 160D-301)
- Three members minimum (§ 160D-301(a)(1)).
- All meetings are subject to open meetings requirements.
- Other details left up to discretion of local government:
 - Number of members (5 or 7 typically)
 - Non-resident participation
 - Qualifications
 - Terms, vacancies, attendance

Planning Board Authorities (NCGS § 160D-301(b))

1. To prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.
2. To facilitate and coordinate citizen engagement and participation in the planning process.
3. To develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
4. To advise the governing board concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604.

Planning Board Authorities (NCGS § 160D-301(b))

5. To exercise any functions in the administration and enforcement of various means for carrying out plans that the governing board may direct.
6. To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.
7. To perform any other related duties that the governing board may direct.

Types of Land Use Decisions

Legislative – Policy decisions including adoption, amendment, or repeal of regulations.

Examples: ordinance text amendment, zoning map amendment (rezoning), conditional zoning
Final decisions reserved for the governing board.

Advisory – Not final decisions, therefore, less regulated. Typically a function of the planning board and/or staff. Examples: recommendations on plans, text and map amendments, etc.

Administrative – Routine activities typically handled by professional staff, but sometimes by planning board or governing board. Examples: issuing permits, enforcement, application of non-discretionary standards (including most land subdivision).

Quasi-judicial – Formal actions where the decision makers apply discretion in applying existing policies to individual or special cases. Quasi-judicial (i.e. court-like) decisions use evidentiary hearings to gather facts and evidence and have very specific requirements.

Examples: special/conditional use permits, variances, and appeals. Decisions can be made by the governing board, planning board, or board of adjustment.

Local Approval Authorities

- **Land use ordinance Text Amendment and Zoning Map Amendment (incl. CZ)**
 - Planning Board recommendation to Governing Board for final approval (§160D-604(b))
 - Statement of plan consistency (and reasonableness) required (§160D-604(d) & 605(b))
 - Remember: Applicant has no right to an amendment. Board may deem ordinance/map appropriate.
- **Appeal or Variance**
 - Board of Adjustment (§160D-705(b) & (d))
- **Special Use Permit**
 - Governing Board, Planning Board, or **Board of Adjustment** (§160D-705(c))
- **Major Subdivision Preliminary and Final Plat**
 - Governing Board, Planning Board, or Board of Adjustment **if discretionary** (§160D-803(c))
 - If not discretionary, approve or deny based on adherence to objective standards
- **Minor Subdivision Plat**
 - Same as above, typically non-discretionary, administrative review by staff.

Text and Map Amendments

- All proposed amendments to a land use ordinance or the zoning map must be submitted to the planning board for review and comment.
- The planning board must provide a written recommendation addressing plan consistency, i.e. whether the proposed amendment is consistent with any adopted comprehensive plan or other adopted, applicable plan.
- The Aldermen are not bound by planning board recommendations.

Key Considerations: Text Amendments

- Is the amendment consistent with approved plans?
Written Plan Consistency Statement is Required!
- Does the amendment balance the development needs of the community with protection of neighborhoods, property values, natural resources, transportation and utility systems?
- How will the amendment affect existing development? Will it create nonconformities?
- How will the amendment affect future development? Will it appropriately allow or restrict development intensity?
- Should the change be universal or targeted to certain areas? Should the change be accomplished with a text amendment or map amendment?

Key Considerations: Map Amendments

- Is the amendment/rezoning consistent with approved plans?
 - What does the future land use map say?
 - Does the amendment further identified goals or objectives like protecting community character, separating incompatible uses, creating jobs?
 - **Written Plan Consistency Statement is Required!**
- What is the character of the surrounding area (zoning districts, current uses, environmental features)? What are the impacts to neighbors, infrastructure, traffic, stormwater, safety, property value, noise, etc.?
- Should the change be applied to one or more specific properties or to all properties in a district? If the latter, maybe a text amendment is more appropriate, like a change in permitted uses or an entirely new district.
- Consider all permissible uses

Key Considerations: Zoning General

- NOT appropriate to consider:
 - Applicant/occupant identity – i.e. race, gender, age, well-liked, local, national chain
 - Property ownership – i.e. owner-occupied or for rent
 - Occupancy – i.e. low-income vs. high-income occupants
 - Investment – whether the a project/use will be profitable
- **Property rights** – vesting may occur through formal process
- **Must approve certain development proposals** if all ordinance standards are met:
 - May include site plans, zoning change of use, sign permit, subdivision plat

Special Zoning Considerations

- Cell Towers (cannot exclude or regulate based on health)
- Signs (can regulate size, type, lighting, etc. but not content)
- Manufactured Housing (cannot exclude or regulate age/value)
- Single-Family/Duplex Housing (cannot regulate design, cannot impose moratorium to develop ordinances)

Key Considerations: Subdivision

- Unless approved by a quasi-judicial process, subdivision approval is administrative and should be based only on adherence to objective standards in the ordinance(s).
- Subdivision approval is not the time to decide whether a project is desired. Zoning determines what, where, and at what density development may locate. Subdivision is generally approved by right if it conforms to ordinance standards.
- Appropriate considerations (generally):
 - Water, sewer, stormwater/drainage, roads, open space and recreation, lot dimensions, easements, HOA/POA responsibilities, wetlands and floodplains, streetlights,
- Inappropriate considerations (generally):
 - Housing size, property values, characteristics of residents, neighborhood character, density, school capacity, plan consistency
- Conditions, if any, should be directly tied to satisfying ordinance requirements

Plat vs Site Plan (Generally)

Site Plan: A detailed map meeting the requirements of the zoning ordinance for the purposes established, usually development of a site or group of sites where land subdivision approval is not sought.

Plat: A map or plan prepared by a registered land surveyor for land registration (i.e. recording with the Register of Deeds)

Subdivision Plat: A plat prepared for the purpose of subdividing land.

Preliminary Plat, Final Plat, Minor Plat: NCGS gives zoning authorities the ability to define multiple subdivision approval categories. Preliminary and Final plats are typical for major subdivisions, Minor and Final plats are typical for minor subdivisions.

Conflict of Interest (§160D-109)

- *“(b) Appointed Boards. - Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.”*
- *“(f) Familial Relationship. - For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.”*
- Member must abstain from voting but may participate in the deliberations (although it is not advisable).

Open Meetings (NCGS § 143-318.9-18)

- “Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, **it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly.**”
- Each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.
- “Official meeting” means a meeting, assembly, or gathering together at any time or place (including teleconference or other electronic conference) of a **majority** of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction of the public body.

Open Meetings (NCGS § 143-318.9-18)

- A social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting (unless called or held to evade the spirit and purposes of the law).
- Any person may challenge in superior court the validity of any action taken by a public body at a meeting in violation of the open meetings law.
- The open meetings law does not create a right to be heard, only a right to attend. Those who attend have no guaranteed right to speak unless guaranteed by local ordinance, policy, or guideline.

Public Records (NCGS § 132-1)

(a) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, ***regardless of physical form or characteristics***, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.....

Questions?



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