

**ARTICLE II: GENERAL ADMINISTRATION****Section 2.1 Board of Commissioners**

In addition to any authority granted to the Town of Rolesville Board of Commissioners (also referred to as the “Town Board”) by general or special law, the Board of Commissioners shall have the following powers and duties in the administration of the UDO:

- (1) To review, hear, consider and approve or disapprove:
  - (a) The adoption of an ordinance to amend the Official Zoning Map (rezoning).
  - (b) The adoption of an ordinance to amend the text of the UDO (text amendment).
- (2) To review, hear, consider and approve, approve with conditions, or disapprove as appropriate:
  - (a) The adoption of an ordinance to amend the Rolesville Official Zoning Map (rezoning); provided, however, the final action by the Town Commissioners shall include the adoption of a statement describing whether its action is consistent with the Comprehensive Plan and any other applicable town-adopted plan(s) and explaining why the Commissioners considers the action taken to be reasonable and in the public interest).
  - (b) Applications for special use permits.
  - (c) Applications for site plans.
  - (d) Applications for master subdivision plans.
  - (e) Applications for preliminary subdivision plans.
- (3) To take any other action not delegated to the Planning Board, Board of Adjustment, Town Manager, Planning Director, or other town staff, as the Board of Commissioners may deem desirable and necessary to implement the provisions of the UDO.
- (4) Conflict of Interest. Commissioners shall not vote on any matter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the Commissioner.

**Section 2.2 Planning Board****2.2.1 Objective**

The objective and purpose of the Town of Rolesville Planning Board shall be as set forth in North Carolina General Statute 160A-361, and other general and special state laws relating to planning in the Town of Rolesville, , and those power and duties delegated to the Planning Board by the Board of Commissioners of the Town of Rolesville by ordinance dated September 17, 1973, in accordance with the above mentioned enabling law. The Town of Rolesville's Planning Board is hereinafter referred to as the Planning Board.

**2.2.2 Membership and Vacancies**

The Planning Board shall consist of six (6) members. Four (4) members shall be citizens living within the corporate limits of the municipality and two members shall be residents of

the county living within the area of municipal extraterritorial jurisdiction. The members residing within the municipality shall be appointed by the Board of Commissioners and the members residing within the area of municipal extraterritorial jurisdiction shall be appointed by the Board of County Commissioners of Wake County, upon receipt of a resolution from the municipal legislative body requesting that such appointments be made. In the event the Board of County Commissioners fails to make the appointments requested within the ninety days of receipt of the resolution, the municipal legislative body shall make the appointments.

Their successors shall be appointed for terms of three years. 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 the original appointment.

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.

### **2.2.3 Powers and Duties**

It shall be the function and duty of the Planning Board to request comprehensive surveys and studies of existing conditions and probable future developments and evaluate such plans for physical, social and economic growth, as will best promote the public health, safety, morals, convenience or the general welfare as well as efficiency and economy in the development of the Town of Rolesville. In general, the Planning Board shall have the power and duty to:

- 2.2.3.1 Request studies of the area within its jurisdiction and surrounding areas;
- 2.2.3.2 Determine objectives to be sought in the development of the study areas;
- 2.2.3.3 Request the preparation of anadopt plans for achieving objectives;
- 2.2.3.4 Develop and recommend policies, ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner;
- 2.2.3.5 Advise the legislative body concerning the use and amendment of means for carrying out plans;
- 2.2.3.6 Perform any other related duties that the legislative body may direct;
- 2.2.3.7 The Planning Board shall review and make recommendations to the legislative body 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 thirty (30) days from the date on which the question has been

submitted in writing to the Board, the legislative body may, if it deems wise, take final action.

- 2.2.3.8 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.
- 2.2.3.9 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.
- 2.2.3.10 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.

#### **2.2.4 Officers and Duties**

- 2.2.4.1 The officers of the Planning Board shall consist of a Chairman, Vice Chairman, and Secretary.
- 2.2.4.2 The Chairman shall preside at all meetings and hearings of the Planning Board and have the duties normally conferred by parliamentary usage on such officers.
- 2.2.4.3 The Vice Chairman shall serve as acting Chairman in the absence of the Chairman, and at such times he shall have the same power and duties as the Chairman.
- 2.2.4.4 The Secretary shall keep minutes and records of the Planning Board, and attend to such duties as are normally carried out by a secretary.

#### **2.2.5 Election of Officers**

- 2.2.5.1 Officers shall be elected by the Planning Board from among its appointive members.
- 2.2.5.2 Officers shall be elected at the annual organization meeting which shall be held in January of each year.
- 2.2.5.3 The candidate for each office receiving a majority vote of the entire membership of the Planning Board shall be declared elected.
- 2.2.5.4 All officers shall be elected for a term of one year and all officers shall be eligible to succeed themselves.

2.2.5.5 Vacancies in the office shall be filled immediately for the unexpired term by the regular election procedure.

### **2.2.6 Appointed Staff**

2.2.6.1 The Planning Board may appoint, with concurrence of the Town of Rolesville Board of Commissioners, such employees and staff as it may deem necessary for its work, including a secretary to furnish additional staff assistance to the Planning Board.

2.2.6.2 The expenditures of the Board, exclusive of gifts, shall be within the amounts appropriated for the purpose by the Town of Rolesville Board of Commissioners.

### **2.2.7 Meetings**

2.2.7.1 Regular meetings of the Planning Board shall be held on the 3rd Monday of each month at 7:30 p.m. in the Town Hall, or other place designated by the Chairman.

2.2.7.2 All business to be considered shall be listed on an agenda and to secure such consideration must be received by the Chairman or Secretary at least three days before any regular scheduled meeting. All special business or items not specifically noted on the regular meeting agenda may be deferred by the Planning Board until the next regular meeting date.

2.2.7.3 All meetings at which official action is taken shall be open to the general public; however, this shall in no way prohibit or restrict the Planning Board from adjourning on a motion for executive session.

2.2.7.4 Special meetings may be called by the Chairman. The notice of such a meeting shall specify the purpose of the meeting and no other businesses may be considered except by unanimous consent of the Planning Board members present. The Secretary shall give proper notice to members of the Planning Board of such a meeting.

2.2.7.5 A majority of the appointed members of the Planning Board shall constitute a quorum and shall be present before any formal business is transacted.

2.2.7.6 All plans, reports and recommendations of the Planning Board must be approved by at least a majority of the appointed members of the Planning Board. The vote of a majority of these members present shall be sufficient to decide all matters before the Planning Board, provided a quorum is present. No Planning Board member shall participate in the decision of any matter that is likely to have a direct, substantial and readily identifiable financial impact on the member.

### **2.2.8 Order of Business**

The order of business at regular meetings shall be:

- (a) Roll call.
- (b) Reading of minutes of previous meeting.
- (c) Hearing of persons having business with the Board.
- (d) Reports of officers and committees.
- (e) Old business.
- (f) New business.
- (g) Adjournment.

## **Section 2.3 Board of Adjustment**

### **2.3.1 Establishment.**

A Board of Adjustment is hereby re-established and continued. The Board of Adjustment shall consist of five (5) members, including three (3) residents of the Town of Rolesville and two (2) residents of the extraterritorial jurisdiction. All members of the Board shall have voting power on all matters of business. The town resident members of the Board shall be appointed by the Town Board of the Town of Rolesville. Residents of the extraterritorial jurisdiction shall be appointed by the Wake County Commissioners. The initial terms of office were as follows: one member appointed for a term of one (1) year; two (2) members appointed for terms of two (2) years (one of whom is an extraterritorial member); and two members appointed for terms of three (3) years (one of whom is a extraterritorial member). At completion of the initial terms of office for each member, all additional appointments to vacancies of the Board were and shall be for three (3) year terms. The Board members serving when this ordinance is adopted shall continue to serve in accordance with the terms to which they were appointed.

If the Board of County Commissioners fails to appoint the extraterritorial members within ninety (90) days after receiving a resolution from the Rolesville Board of Commissioners requesting that these appointments be made, the Rolesville Board of Commissioners may make them.

### **2.3.2 Powers and Duties of the Board of Adjustment.**

The Board of Adjustment shall have the following powers and duties.

#### **2.3.2.1 Administrative Review.**

To hear and decide appeals where it is alleged that there is error in any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of this ordinance. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the Town. Appeals shall be taken within times prescribed by the Board of Adjustment, by general rule, by filing with the officer from whom the appeal is taken, and with the Board of Adjustment, a

notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, or that because the violation charged is transitory in nature, a stay would seriously interfere with enforcement of this ordinance. In that case, proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that, in its opinion, ought to be made in the premises. To this end, the Board shall have all the powers of the officer from whom the appeal is taken.

#### 2.3.2.2 Variance.

To authorize upon appeal in specific cases, such variance from the terms of this ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this ordinance will, in an individual case, result in practical difficulty, or unnecessary hardship, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done. The existence of a non-conforming use of neighboring land, building, or structure in the same district, or of permitted non-conforming uses in other districts, shall not constitute a reason for the requested variance. Such variance may be granted in such individual cases of unnecessary hardship upon a finding by the Board of Adjustment that the following conditions exist:

- (a) There are exceptional conditions pertaining to the particular piece of property in question because of its shape, size, or topography, that are not applicable to other lands or structures in the same district, or there is a peculiar characteristic of an establishment which makes the parking and/or loading requirements of this ordinance unrealistic.
- (b) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.
- (c) A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.
- (d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.

- (e) The special circumstances are not the result of the actions of the applicant.
- (f) The variance requested is the minimum variance that will make possible the legal use of the land, building, or structure.
- (g) The variance is not a request to permit a use which is not a permitted use or a special use in the district involved.
- (h) No change in permitted uses may be authorized by variance.
- (i) Appropriate conditions, which must be reasonably related to the conditions or circumstances that give rise to the need for a variance, may be imposed on any approval issued by the Board.

#### 2.3.2.3 Map Interpretation.

To interpret the official zoning map in accordance with Section 4.3 of this ordinance.

### 2.3.3 Proceedings of the Board of Adjustment.

- (A) All meeting of the Board of Adjustment are public meetings.
- (B) The Board of Adjustment shall elect a chairman and vice-chairman from its regular members, who shall serve for one (1) year or until re-elected or until their successors are elected and shall appoint a clerk, who may be a town staff member.
- (C) The presence of four (4) regular members or alternate members of the sitting in place of the members are necessary for a quorum.
- (D) The Clerk of the Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon every question, or if failing to vote, indicating the facts.
- (E) The Board of Adjustment shall adopt rules and by-laws in accordance with the provisions of this ordinance and Article 19, Chapter 160A of the North Carolina General Statutes. A member of the Board of Adjustment may not participate in or vote on any matter in a manner that would violate the constitutional right to an impartial decision maker. Impermissible conflicts include, but are not limited to:
  - (1) a member having a fixed opinion prior to hearing the matter than is not susceptible to change;
  - (2) undisclosed ex-parte communications;
  - (3) a close familial, business, or other associational relationship with an affected person, or
  - (4) a financial interest in the outcome of the matter.
- (F) Vacant positions on the Board of Adjustment and members who are disqualified from voting on a matter are not considered “members of the Board of Adjustment” for

purposes of calculating the requisite number of votes if there are no qualified alternates available to take the place of such members.

- (G) The Board of Adjustment may subpoena witnesses and compel the production of evidence. If a person fails to obey a subpoena issued pursuant to this subsection, the Board of Adjustment may appeal to the General Court of Justice for an order requiring that its order be obeyed, and the Court will have jurisdiction to issue those orders after notice to all proper parties. No testimony of any witness before the Board of Adjustment pursuant to a subpoena issues in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Anyone who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely, is guilty of a Class I misdemeanor.

#### **2.3.4 Decision and Appeal.**

Every decision of the Board of Adjustment shall be filed in the Office of the Zoning Administrator and a written copy thereof shall be delivered to the appellant by personal service or registered mail. Every decision by the Board shall be subject to review by superior court by proceeding in the nature of certiorari. Any appeal to the superior court shall be taken within thirty (30) days after the decision of the Board is filed in the Office of the Zoning Administrator, or after a written copy thereof is delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later.

### **Section 2.4 Technical Review Committee**

The Technical Review Committee (TRC) is composed of technical staff and consultants designated by the Town Manager. It is responsible for reviewing all development plans and major subdivision plans for compliance with the technical requirements established by the Town of Rolesville.

Once a plan has been submitted to the appropriate parties within the required timeframe, as described in the current version of the Town of Rolesville Development Review Procedures, the TRC will meet to discuss the plan, note any deficiencies, make technical recommendations, and decide whether the plan meets all specifications and is ready for consideration by the Planning Board. If corrections are needed, the TRC will provide the developer or applicant with a list of all deficiencies that must be corrected prior to the plan being forwarded on to the Planning Board. Upon completion of its review and comment, the TRC shall forward the plan with comments to the Town Planning Board.

### **Section 2.5 Town Manager**

In the event the Planning Director position is vacant, the duties specified for the Planning Director shall be carried out by the Town Manager.

### **Section 2.6 Planning Director**

The functions and duties of the Planning Director shall include:

- (a) Administration and coordination of the town's planning program, including supervising planning studies and reports, assembling data, preparing maps, maintaining an information system, developing planning policy, and implementing the community planning process.
- (b) Providing staff support and technical assistance to the Board of Commissioners, Planning Board, and Board of Adjustment.
- (c) Providing liaison information and technical assistance to citizens, community groups, other governments, the development community, and other stakeholders.
- (d) Administration of land use controls such as those contained in the UDO, and their technical maintenance.
- (e) Other duties as assigned by the Town Manager.

### **Section 2.7 Zoning Administrator**

The holder of the Office of Planning Director is hereby appointed to serve as Zoning Administrator. The Zoning Administrator who shall be appointed by the Rolesville Town Manager is duly charged with the enforcement of the provisions of this ordinance. If the Zoning Administrator(s) finds that any of the provisions of this ordinance are being violated, he shall notify in writing the person(s) responsible for such violations, indicating the nature of the violation and ordering the action(s) necessary to correct it. He shall also take any other action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions.

### **Section 2.8 Subdivision Administrator**

The holder of the Office of Planning Director is hereby appointed to serve as Subdivision Administrator.

#### Amendments

*10/04/04 to entire document; §2.1, §2.2.7.6, §2.3.2.2, § 2.3.3 amended on 7/10/06 under TA06-03;*