

ARTICLE 2: 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 plats.

- (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 seven (7) members. Four (4) members shall be citizens living within the corporate limits of the municipality and three (3) 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 and adopt 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 and Vice Chairman.
- 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.

2.2.5 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 Meetings

2.2.7.1 Regular meetings of the Planning Board shall be held on the 4th Monday of each month at 7:00 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.

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.

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/Appeals.

The Board of Adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of this Unified Development Ordinance, pursuant to all of the following:

- (1) Any person who has standing under G.S. 160A-393(d) or the town may appeal a decision to the Board of Adjustment. 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.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) The official who made the decision shall transmit to the Board of Adjustment 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.
- (6) 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 of Adjustment 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 of Adjustment 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 of Adjustment may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

- (7) Subject to the provisions of subdivision (6) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.
- (8) 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 of Adjustment shall continue the hearing. The Board of Adjustment 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 of Adjustment shall have all the powers of the official who made the decision.
- (9) 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).
- (10) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution, provided notice of the same is given to the town clerk no later than three (3) business days prior to the date for which the Board of Adjustment public hearing is scheduled.

2.3.2.2 Variance.

When unnecessary hardships would result from carrying out the strict letter of this Unified Development Ordinance, the Board of Adjustment 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.

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.

2.3.2.3 Map Interpretation.

The Board of Adjustment shall hear and decide appeals 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 meetings of the Board of Adjustment are public meetings and shall be held on the 2nd Monday of each month at 10:00 a.m. in the Town Hall, or other place designated by the Chairman.
- (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 of Chapter 160A of the North Carolina General Statutes. A member of any Board of Adjustment exercising quasi-judicial functions pursuant to this Article 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.
- (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.

- (H) Voting. The concurring vote of four-fifths of the Board of Adjustment shall be necessary to grant a variance. A 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 the purposes of this subsection, vacant positions on the Board of Adjustment and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board of Adjustment for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

2.3.4 Decision and Appeal.

- (1) The Board of Adjustment 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 of Adjustment'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 of Adjustment. A quasi-judicial decision is effective upon filing the written decision with the town clerk. The decision of the Board of Adjustment 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.
- (2) 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 of the Board of Adjustment is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

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; §2.2.7.1 amended on 10/18/11 under TA11-07; §2.3.3 amended on 2/22/11 under TA11-01; §2.3 amended on 2/3/14 under TA14-04; §2.2 amended on 3/18/14 under TA14-01.

