



Shallotte Planning Board Meeting - February 2025 Agenda

February 11, 2025 at 5:30 PM

Meeting Chambers – 110 Cheers Street

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

AGENDA AMENDMENTS

PUBLIC COMMENT

1. APPROVAL OF AGENDA

2. APPROVAL OF MINUTES

[January](#) 14, 2025

3. CONFLICT OF INTEREST STATEMENT

[Planning](#) Board Conflict of Interest Statement

4. ACTION ITEMS

I. Quasi-Judicial Training

Cape Fear Council of Governments

Wes Macleod

5. OLD AND NEW BUSINESS

a. Planning Department Report

N) ADJOURN



The Shallotte Planning Board met for their regularly scheduled meeting on January 14, 2025 at the Shallotte Town Hall Meeting Chambers with Chairman Richard Gannaway presiding.

Members Present: Ron Johnson, Edward Springer, Richard Gannaway, Maria Paslick, and new member, Amanda Dunn. Amy Causey (5:48) and Melodie Bryant (6:43) came in late.

Members Absent: None

Staff Present: Robert Waring, Brandon Eaton and Debra White

Aldermen Liaison: Jimmy Bellamy

1. **Agenda Amendment:** Ron Johnson requested to amend the agenda to add the recognition of past Planning Board members.

2. **Approval of Agenda:**

Richard Gannaway motioned to approve the agenda as amended, seconded by Edward Springer. The motion passed 4 yes, 0 no.

3. **Public Comments** None

4. **Recognition of Past Planning Board Member:**

Carson Durham was presented a plaque and acknowledged for his service to Town of Shallotte as Planning Board and Board of Aldermen.

5. **Approval of Minutes:**

Maria Paslick motioned to approve the December 10, 2024 minutes as read, seconded Edward Springer. The motion passed 4 yes, 0 no.

6. **Conflict of Interest Statement**

The Chairperson ask the Board members if they have any potential conflict of interest with the items on the agenda per NCGS 160D-109.

There was no conflict of Interest.

7. Swearing in of Re-Appointed and New Planning Board Members.

Amanda Dunn was appointed to serve on the Planning Board. After taking the oath of office, she was sworn in and immediately began serving on the Planning Board.

Ron Johnson, Richard Gannaway and Melodie Bryant were re-appointed to serve on the Planning Board. Each taking the oath of office, they were sworn in to serve on the Planning Board.

8. Election of Planning Board Officers

Action Taken:

Maria Paslick nominated Richard Gannaway as Planning Board Chair person. There were no other nominations for chairperson. Motion second by Ron Johnson. The motion passed 5 yes 0 no.

Ron Johnson nominated Melodie Bryant as Planning Board Vice-Chairperson. There were no other nominations for vice-chairperson. Motion second by Richard Gannaway. The motion passed 5 yes 0 no.

9. Election of Board of Adjustment Officers

Action Taken:

Edward Springer nominated Ron Johnson as Board of Adjustment Chair person. There were no other nominations for chairperson. Motion second by Richard Gannaway. The motion passed 5 yes 0 no.

Ron Johnson nominated Edward Springer as Board of Adjustment Vice-Chairperson. There were no other nominations for vice-chair person. Motion second by Richard Gannaway. The motion passed 5 yes 0 no.

10. Planning Board Training:

Wes Macleod, Local Government Service Director, Cape Fear Council of Governments performed the annual training for the Planning Board members.

No Action Required

11. Zoning Text Amendment: TXT 25-01 Staff Initiated Text Amendment to Town of Shallotte Unified Development Ordinances, Article 3, Section 3-2 & Article 3 reduction in Planning Board posts, and Section 3-4 (H), removal of term limits for Chair and Vice Chair.

Action Taken:

Maria Paslick motioned to recommend approval to Board of Aldermen of the Zoning Text Amendment TXT 25-01, Article 3, Section 3-2 reduction in Planning Board post but EXCLUDING the change to Article 3, Section 3-4 (H), removal of term limits for Chair and Vice Chair. Motion seconded by Ron Johnson. The motion passed 7 yes 0 no.

Ron Johnson motioned that the Shallotte Planning Board adopt the Statement of Consistency as read, seconded by Melodie Bryant. The motion passed 7 yes, 0 no.

12. Zoning Text Amendment TXT 25-02 Staff Initiated Text Amendment to Town of Shallotte Unified Development Ordinances, Article 3, Section 3-15, reduction in Board of Adjustment posts to align with Planning Board reduction.

Action Taken:

Maria Paslick motioned to recommend approval to Board of Aldermen of the Zoning Text Amendment TXT 25-02, Article 3, Section 3-15, reduction in Board of Adjustment posts to align with Planning Board reduction. Motion seconded by Edward Springer. The motion passed 7 yes 0 no.

Melodie Bryant motioned that the Shallotte Planning Board adopt the Statement of Consistency as read, seconded by Amy Causey. The motion passed 7 yes, 0 no.

13. Old & New Business

No Action Required

14. Adjournment

Melodie Bryant made a motion to adjourn, seconded by Ron Johnson. The motion passed 7 yes 0 no.

Respectfully Submitted,

Debra White

Debra White,
Planning Board Clerk

Town of Shallotte Planning Board Conflict of Interest Statement

Taking into consideration the general statute below and the items described on this month's agenda, does any member of the Planning Board or staff have any potential conflicts of interest that should be addressed by the Board at this time? If so, please make those concerns known now.

§ 160D-109. Conflicts of interest.

(a) Governing Board. – A governing board member shall not vote on any 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. A governing 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.

(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.

(c) Administrative Staff. – No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

(d) Quasi-Judicial Decisions. – A member of any board exercising quasi-judicial functions pursuant to this Chapter 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.

(e) Resolution of Objection. – If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(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. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

Board of Adjustment Training for the Town of Shallotte

February 11, 2025

CAPE FEAR COUNCIL OF GOVERNMENTS
WES MACLEOD, AICP, ASLA



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.

Types of Land Use Decisions

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

Examples: zoning text amendment, rezoning (map amendment) and also annexation, budget. Final decisions reserved for the governing board (board of aldermen, council).

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, approving plans or plats, enforcement, application of non-discretionary standards.

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.

N.C.G.S. §160D-302 – Board of Adjustment

- Authorizes establishment of a board of adjustment
- 5 members minimum appointed to 3-year terms.
- Alternates may be appointed.
- Quasi-judicial procedures required.
- May allow for the Planning Board to function as the BOA

Town of Shallotte Board of Adjustment (BOA) Duties - § 3-18

- Hear appeals.
- Authorize variances.
- ***§ 160D-403 (b) specifically defines and establishes procedure for staff “determinations” of development regulation provisions. Appeals of such determinations may be brought to the BOA.***

Appeals (1)

- Appeals of advisory opinions are not allowed. A case must be the appeal of an actual official staff determination or action.
- The standard is not what the ordinance should say, but what the governing board intended. Board members must not substitute their judgment for that of the governing board.
- An appeal must be brought by a party with standing (i.e. hold a property interest that is specially affected by the decision) within 30-days of notice of decision.

Appeals (2)

- Appeal must be heard in a reasonable time and notice is required.
- Official whose decision appealed must provide relevant documents to the board and the appellant must be present at the hearing.
- Board may reverse or affirm, in whole or in part, appealed decision.
- Parties may agree to mediation or other alternate resolution.

Standing - § 160D-1402(c)

Any person who has standing or the Town may appeal a decision to the board of adjustment.

1. The owner of the property, someone with an option to purchase or lease the property, and the applicant for a development approval.
2. Any other person who will suffer “special damages” as a result of the decision being appealed. This may include parking, stormwater runoff, and crime problems, or property value impacts. Proximity alone not enough to prove such.
3. An association of neighborhood property owners that would be affected, provided that at least one of the association members would have standing as an individual and that the association was not formed in response to the particular application being appealed.
4. The unit of local government that has made the decision being appealed.

Variations: § 160D-705 (d)

Gives board permission to modify any provision of the ordinance to prevent unnecessary hardships where:

1. Unnecessary hardship would result from the strict application of the regulation. It is not 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.*** A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

Variations: § 160D-705 (d)

Gives board permission to modify any provision of the ordinance to prevent unnecessary hardships where:

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 is not a self-created hardship.
 4. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.
- No change in permitted uses and appropriate conditions may be included.***
 - Recommend the board vote on each of the four provisions.***

Quasi-Judicial Procedures: § 160D-406

Quorum – Depends on local ordinance, simple majority or 4/5ths.

Voting – Requires 4/5ths (0.8) majority to grant variance, simple majority to issue CUP/SUP, or affirm/deny an appeal. Vacant seats and disqualified members are not considered members for determining majority where qualified alternates not available.

Hearing – Evidentiary hearing to gather facts, not public opinion. A detailed record of the hearing is required, including detailed minutes or, preferably, verbatim transcripts or recordings. Hearing for each case must be opened and closed.

Quasi-Judicial Procedures: § 160D-406

Witnesses – Evidence must be presented under oath and cross-examination must be allowed. BOA chair may subpoena witnesses. The chair or clerk to board may administer oaths.

Findings – Written findings of fact are required. Where there is conflicting evidence, the Board must specify what it determines to be the facts that are the basis for the decision.

Quasi-Judicial Procedures : § 160D-406

Conflict of Interest – The NC Constitution gives parties to QJ decisions the right to an impartial decision maker, so conflicts of interest must be avoided.

Open meetings – All meetings and all deliberations must be open to the public, but deliberations and decision may be separate from hearing.

Quasi-Judicial Procedures: § 160D-406

Evidence – Evidence must be **substantial, competent, and material** and must be entered into the record and kept on file. Hearsay and non-expert testimony cannot be the basis for a decision or for establishing a fact. Board members ***may not gather evidence outside of the hearing*** and ex-parte communication is not allowed. Only evidence presented at the hearing and subject to cross-examination should be considered.

Competent Evidence § 160D-1402(j)(3)

The term "competent evidence" shall not include the opinion testimony of lay witnesses as to any of the following:

- a. The use of property in a particular way affects the value of other property.
- b. The increase in vehicular traffic resulting from a proposed development poses a danger to the public safety.
- c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

Conflict of Interest: § 160D-109(d)

Members are disqualified from participating, not just from voting, in the following situations:

- Fixed opinion prior to hearing
- Undisclosed ex-parte communication (discussion regarding case)
- Close family, business, or other relationship with an affected person
 - ***A "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.***
- Financial interest in outcome

If objection is raised and member refuses to recuse, rest of board votes on recusal.

Sample Findings of Fact

- Section 12-5(a) of the Zoning Ordinance required a 15' side yard setback in the R-10 zoning district when the structure was constructed.
- The applicant constructed the accessory structure in the summer of 2013 without a permit and in violation of the side yard setback required at the time of construction.
- The proposed development project is expected to generate an average of 35 weekday P.M. peak hour vehicles according to the ITE Parking Generation manual 4th Ed.

Sample Conclusions of Law

- The applicant's hardship is self-imposed because he/she knew or should have known that a permit was required prior to construction.
- The hardship is not the result of site characteristics but is common to all commercial property in the neighborhood.
- The zoning administrator denied the permit appropriately because the proposed building should be classified as a primary structure, not an accessory structure.

Sample Hearing Process/Sequence

1. Chair opens hearing and announces case.
2. Witnesses are sworn in.
3. Staff gives summary overview the case.
4. Appellant (or attorney) presents case, documents, evidence, witnesses. BOA may ask questions. Chair allows cross-examination.
5. Objectors present case, documents, evidence, witnesses. BOA may ask questions. Chair allows cross-examination.

Sample Hearing Process/Sequence

6. Applicant's rebuttal.
7. Objector's rebuttal.
8. Chair summarizes evidence and excludes hearsay, opinion. BOA may add/clarify.
9. All parties may offer objections, corrections, additions to Chair's summary of evidence.
10. Deliberation and determination of facts and conclusions.
11. Motion and vote. Hearing closed.

Questions?



Wes MacLeod, AICP, ASLA
Cape Fear Council of Governments
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wmacleod@capefearcog.org



TOWN OF SHALLOTTE

PLANNING & ZONING DEPARTMENT

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Section 5, Item a.

TO: Planning Board
FROM: Robert Waring, Planning Director
DATE: February 11, 2025
RE: Monthly Planning Department Report

This memo & attached reports provide a summary of the Planning & Zoning Depart. in the past month:

1. The Town's Planning Board met January 14
 - a. The PB swore in re-appointed & newly appointed members
 - b. The PB Chairman presented outgoing member, Carson Durham with a plaque commemorating his service
 - c. The PB Appointed Mr. Ganaway Chairman & Mrs. Bryant as Vice Chairman
 - d. The Board appointed Mr. Johnson as Chairman to the Zoning Board of Adjustment & Mr. Springer as Vice Chairman
 - e. The PB reviewed two text amendments detailing PB & ZBA size
 - f. The PB were provided annual training with the Cape Fear Council of Governments
 - g. The Board's next meeting is scheduled for February 11
2. The Town's TRC did not meet for the January 16:
 - a. The next meeting scheduled for February 20
3. Staff attended the GSATS TCC meeting
 - a. The DA Grant applications were not discussed
 - i. The Town requested funds for the construction of a section of sidewalk along Mulberry Street
4. Staff, GSATS & Bolton & Menk (Consultants) have met twice to discuss the Town's collector street planning efforts a stakeholder's group has been formed
 - a. The consultant expects a six month drafting period
 - b. A stakeholder's committee will be used to provide specific input & is expected to meet 3-4 times during the drafting of the plan
 - c. Final plan will be brought to Planning Board & Board of Aldermen
5. Staff participated in the review of the pay study material & recommendations
6. Staff is in the process of reviewing the final plat for Phase I, Summer's Walk residential subdivision (backside of Owendon)
7. Staff met with developers to discuss the development of a multifamily tract along Frontage Road (Highland Forest)
8. Please forward any zoning or nuisance complaints to Brandon Eaton, Planner, beaton@townofshallotte.org Phone: (910) 754-4032
9. The Town collected \$37,168 fees for January 2025. Fees collected January 2024 totaled \$140,266