

ORDINANCE NO. _____

ORDINANCE AMENDING THE TEXT OF ARTICLE II, PLANNING BOARD, OF CHAPTER 58, PLANNING AND DEVELOPMENT, OF THE BUNCOMBE COUNTY CODE OF ORDINANCES

WHEREAS, pursuant to N.C. Gen. Statutes § 153A-323, Procedure for adopting, amending, or repealing ordinances under this Article and Chapter 160A, Article 19 as well as Chapter 1, Section 1-8 of the Buncombe County Code of Ordinances, the County may amend its ordinances related to planning and regulation of development after giving proper public notice and holding a public hearing;

WHEREAS, the Buncombe County Planning Board has reviewed this proposed amendment to Chapter 58, Article II, Planning Board, in order to be consistent with recent changes to North Carolina General Statutes and a recent North Carolina Court of Appeals decision regarding quasi-judicial proceedings;

WHEREAS, in accordance with the procedures set forth in the Buncombe County Code of Ordinances, the Buncombe County Planning Board met to consider the proposed amendment;

WHEREAS, the Planning Board recommended in a vote of **6 to 0** on October 3, 2016 that the Board of Commissioners approve the proposed amendment to modify the Buncombe County Code of Ordinances Chapter 58, Article II, Planning Board, in order to be consistent with recent changes to North Carolina General Statutes and a recent North Carolina Court of Appeals decision regarding quasi-judicial proceedings;

WHEREAS, this Board has reviewed this written recommendation of the Buncombe County Planning Board; and

WHEREAS, in accordance with North Carolina General Statutes, the Board of Commissioners duly advertised and held a public hearing to consider the proposed amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS THAT:

Section 1. That this Board does hereby approve the following amendment to Chapter 58 of the Buncombe County Code of Ordinances as follows:

ARTICLE II. - PLANNING BOARD

FOOTNOTE(S):

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State Law reference— Authority to create a planning agency, G.S. 153A-321.

Sec. 58-11. - Creation.

The board of commissioners hereby establish the county ~~planning board~~ Planning Board under the authority granted in G.S. 153A-321 and G.S. 153A-322.

(Ord. No. 20272, § 1, 9-7-93)

Sec. 58-12. - Composition and vacancies.

The county ~~planning board~~ Planning Board, referred to in this article as the ~~planning board~~ Planning Board, shall consist of nine members. A quorum shall consist of five (5) Planning Board members. A record of members present should be maintained. All ~~planning board~~ Planning Board members shall be citizens and residents of the county, and shall be appointed by the board of commissioners. ~~The initial m~~ Members of the county ~~planning board~~ Planning Board shall serve staggered terms. New appointments for terms of three years shall be made. Vacancies ~~occurring for reasons other than expiration of appointed terms~~ shall be filled as they occur by the board of commissioners for the period of the unexpired term. ~~Regular attendance of the planning board's meetings is considered a prerequisite for the maintenance of membership on the board.~~

(Ord. No. 20272, § 2, 9-7-93; Ord. No. 96-6-10, § 1, 6-18-96)

Sec. 58-13. - Organization; rules; meetings; records.

~~Within 30 days after appointment, the planning board shall meet and elect a chairperson, vice-chairperson, secretary, and create and fill other offices as it may determine. The Planning Board shall annually elect a Chair and a Vice-Chair from among its members. The term of the chairperson Chair and other officers shall be one year, with eligibility for reelection. The ~~planning board~~ Planning Board shall adopt bylaws and rules for transaction of its business and shall keep a record of its members' attendance, ~~and of its resolutions, discussions, findings and recommendations, which record shall be a public record.~~~~

The Planning Board shall hold at least one meeting monthly at a specified time and place and all of its meetings shall be open to the public. ~~There shall be a quorum of five planning board members for the purpose of taking any official action required by this article.~~ Special meetings of the Planning Board may be called at any time by the Chair or by request of four or more members of the Planning Board. At least 48 hours written notice of the time and place of meeting shall be given by the Chair to each member of the Planning Board. All Planning Board meetings are to be held in accordance with N.C. Gen. Stat. 143-318.9 et seq., commonly referred to as the Open Meeting Law.

Cancellation of meetings. Whenever there are no applications or other business for the Planning Board, or whenever so many regular members notify planning staff of their inability to attend such that a quorum will not be available, the Planning Director or his/her designee may dispense with a meeting by giving written or oral notice to all members.

The Planning Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and also keep records of its examinations and other official actions.

(Ord. No. 20272, § 3, 9-7-93; Ord. No. 96-6-10, § 2, 6-18-96)

Sec. 58-14. Expenditures; incurring indebtedness; donations.

The expenditures of the planning board, exclusive of gifts or grants, shall be within the amounts appropriated for the purpose by the board of commissioners, and no indebtedness for which the county shall be liable shall be contracted or incurred by the planning board unless an appropriation is made by the board of commissioners for such purpose, as authorized by law, and then only to the extent of such appropriation.

{Ord. No. 20272, § 4, 9-7-93}

Sec. 58-15. - Powers and duties.

The ~~planning board~~ Planning Board shall have the power to perform the following duties:

- (1) Make studies of the area within its jurisdiction.
- (2) Determine objectives to be sought in the development of the study area.
- (3) Prepare and adopt plans for achieving these objectives.
- (4) Develop and recommend policies, ordinances, administrative procedures and other means of carrying out plans in a coordinated and efficient manner.
- (5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans.
- (6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct.
- (7) Perform any other related duties that the board of commissioners may direct.

(Ord. No. 20272, § 5, 9-7-93)

Sec. 58-16. Rules of conduct.

- (a) Members of the Planning Board may be removed by the board of commissioners for cause, including violation of the rules stated in this section.
- (b) Faithful attendance at meetings of the Planning Board and conscientious performance of the duties required of members of the Planning Board shall be considered a prerequisite of continuing membership on the Planning Board.
- (c) No Planning Board member shall accept any gift, whether in the form of a service, a loan, a thing of value, or a promise, from any person, firm, or corporation that, in the member's knowledge, is interested directly or indirectly in any manner whatsoever in business dealings with the county.

- (d) No Planning Board member shall accept any gift, favor, or thing of value that may tend to influence that Board member in the discharge of duties.
- (e) No Planning Board member shall grant any improper favor, service, or thing of value in the discharge of duties.
- (f) The Chair, or in his or her absence the Vice-Chair, may administer oaths and request the attendance of witnesses in accordance with N.C. Gen. Stat. 153A-345.1.
- (g) All regular members shall vote on any issue unless they have disqualified themselves for one or more of the reasons listed in this Article or as may be required by law. The concurring vote of four-fifths of the Board shall be necessary to grant a variance, or as otherwise required by law. In all other matters, the vote of a majority of the members present and voting shall decide issues before the Planning Board. For purposes of this article, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the Board" for calculation of the requisite supermajority.

Sec. 58-17. Regular business.

(a) Order of business

1. The order of business at regular Planning Board meetings shall be as follows:

- a) Discussion/adjustment/approval of agenda
- b) Approval of minutes of previous meeting
- c) Business
- d) Discussions
- e) Public Comment
- f) Adjournment

The case before the Board shall be presented by staff and parties in interest shall have privileges of the floor as designated by the Chair.

2. The order of business at special meetings of the Planning Board shall be as follows:

- a) Business as announced in the notice of the special meeting
- b) Adjournment

3. Action by the Board:

The Board shall proceed by motion. Any member, including the Chair, may make a motion. All motions require a second before the motion can be discussed. A member may make only one motion at a time. A substantive motion is out of order while another substantive motion is pending. A motion shall be adopted by a majority of the votes cast. The Chair shall state the motion and then open the floor to Board members for debate. The Chair shall preside over the debate according to these general principles:

- a) The introducer (the member who makes the motion is entitled to speak first);
- b) A member who has not spoken on the issue shall be recognized before someone who has already spoken;

- c) To the extent possible, the debate shall alternate between opponents and proponents of the measure.

4. Procedural motions:

These procedural motions, and no others, shall be in order. All motions require a second before the motion can be discussed. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority vote for adoption.

In order of priority (if applicable), the procedural motions are:

- a) To adjourn. The motion may be made at any time by a member of the Board and would require majority vote.
- b) To take a recess.
- c) Call to follow the agenda. The motion must be made at the first reasonable opportunity or it is waived.
- d) To suspend the rules. The motion requires a vote equal to a quorum.
- e) To divide a complex motion and consider it by paragraph.
- f) Call of the previous question. The motion is not in order until every member of the Board has had at least one opportunity to speak.
- g) To postpone to a certain time or day.
- h) To amend. An amendment to a motion must be germane to the subject matter of the motion, but it may achieve the opposite effect of the motion.
- i) To reconsider. The motion must be made by a member who voted with the prevailing side. The motion must be made at either the same meeting at which the original vote was taken or the next regular meeting. The motion cannot interrupt deliberation or a pending matter but is in order at any time before adjournment or the next regular meeting.
- j) To rescind or repeal.
- k) To ratify.
- l) Withdrawal of a motion. A motion may be withdrawn by the introducer at any time before a vote.

5. Reference to Robert's Rules of Order:

To the extent not provided for in these rules and to the extent that the reference does not conflict with the spirit of these rules, the Board shall refer to Robert's Rules of Order for unresolved procedural questions.

Sec. 58-18. Quasi-Judicial hearings. Quasi-Judicial hearings shall be conducted as follows:

(1) Appeals and hearings on variance requests. The Planning Board shall hear and decide all subdivision ordinance variance requests as well as appeals from any order, requirement, decision, or determination made by the subdivision administrator where such decision complies with one or more generally stated standards requiring a discretionary decision. The Planning Board will also hear appeals pursuant to any chapter or article of the Code of Ordinances for Buncombe County indicating that such appeals shall be heard by the Planning Board.

(2) A member of the Planning Board 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 conflicts 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.

(3) No Planning Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided however, that a member may receive and/or seek information pertaining to the case from planning staff or any other member of the Planning Board.

(4) Members of the Planning Board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

(5) Procedure for filing appeals. All statute of limitations and procedures for filing an appeal or variance request to the Planning Board are set forth in N.C. Gen. Stat. 153A-345.1 or as amended.

(6) Conduct of hearing. Any party may appear in person or by agent as authorized by law or by attorney at the hearing. The order of business for the hearing shall be as follows:

- a. The Chair, or such person as he/she shall direct, shall give a preliminary statement of the case.
- b. The applicant shall present the argument in support of his application.
- c. Persons opposed to granting the application shall present the argument against the application.
- d. Both sides will be permitted to present rebuttals to opposing testimony.
- e. The Chair shall summarize the evidence, which has been presented, giving the parties opportunity to make objections or corrections.

Witnesses may be called and factual evidence may be submitted, but the Planning Board shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Planning Board may view the property before arriving at a decision. All witnesses before the Planning Board shall be placed under oath and an opposing party may cross examine them. The Procedural Motions as set forth above should govern action by the Planning Board.

Sec. 58-19. Quasi-Judicial decisions and judicial review.

(1) Hearings. All Planning Board hearings shall be conducted in accordance with N.C. Gen. Stat. §153A-345.1 or as amended.

(2) Decisions. All Planning Board decisions shall be made in accordance with N.C. Gen. Stat. §153A-345.1 or as amended.

(3) Filing of decisions. Decisions of the Planning Board are effective upon filing the written decision with the Planning Director or his/her designee following delivery of such decision 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. The person required to provide notice of the decision shall certify that proper notice has been made.

Section 2. That if any section, subsection, clause or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance; and

Section 3. That all ordinances and clauses of ordinances in conflict herewith be and are hereby repealed to the extent of such conflict.

Section 4. This ordinance is effective upon adoption.

Read, approved and adopted this 1st day of November, 2016.

ATTEST

BOARD OF COMMISSIONERS FOR THE
COUNTY OF BUNCOMBE

Kathy Hughes, Clerk

BY _____
David Gantt, Chairman

APPROVED AS TO FORM

County Attorney