

ARTICLE III

ADMINISTRATIVE MECHANISMS

3-1 PLANNING AND ZONING BOARD

3-1.1 Authority

Pursuant to NCGS 160A-361 and 160A-362 and Article II of the City of Shelby Municipal Code, the Shelby Planning and Zoning Board has been established and shall be referred to herein as the Planning and Zoning Board.

If a larger number of extraterritorial members is needed to comply with the proportional representation requirements of NCGS 160A-362, the City Council shall submit to the Board of County Commissioners a resolution requesting that an additional member or members, as appropriate, be appointed. Proportional representation shall be determined by calculating the proportional relationship of the extraterritorial area population to the municipal population and applying that proportional relationship to the total membership of the Planning and Zoning Board. An additional member must be appointed to the Planning and Zoning Board to achieve proportional representation only when the population of the entire extraterritorial area constitutes a full fraction of the city's population divided by the total membership of the Planning and Zoning Board. Once the City of Shelby provides proportional representation, no power available to it under NCGS 160A-360 shall be ineffective in its extraterritorial area solely because county appointments have not yet been made. If the Board of County Commissioners fails to make appointments within 90 days after receiving a resolution from the City Council requesting that they be made, the City Council may make the appointments.

3-1.2 Meetings of the Planning and Zoning Board

- (A) The Planning and Zoning Board shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with the review procedures delineated in this Ordinance.
- (B) Since the Planning and Zoning Board has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures established for the Board of Adjustment. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.
- (C) Minutes shall be kept of all Planning and Zoning Board proceedings.
- (D) All Planning and Zoning Board meetings shall be open to the public, and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting.

3-1.3 Quorum and Voting

- (A) A quorum for the Planning and Zoning Board shall consist of a majority of the board membership (excluding vacant seats). A quorum is necessary for the board to take official action.

- (B) All actions of the Planning and Zoning Board shall be taken by majority vote, a quorum being present.
- (C) A roll call vote shall be taken upon the request of any member.
- (D) A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:
 - (1) If the member has a direct financial interest in the outcome of the matter at issue; or
 - (2) If the matter at issue involves the member's own official conduct; or
 - (3) If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or
 - (4) If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.

3-1.4 Planning and Zoning Board Officers

- (A) At its first regular meeting in June of each year, the Planning and Zoning Board shall, by majority vote of its membership (excluding vacant seats) elect one of its members to serve as chairman and preside over the board's meetings and one member to serve as vice-chairman. The persons so designated shall serve in these capacities for terms of one year. Vacancies in these offices may be filled for the unexpired terms only by majority vote of the board membership (excluding vacant seats).
- (B) The chairman and vice-chairman may take part in all deliberations. The chairman may only vote when the Planning and Zoning Board has a tie vote. The vice-chairman may vote on all issues.
- (C) The Community Development Director or his designee shall serve as secretary to the Planning and Zoning Board.

3-1.5 Powers and Duties of Planning and Zoning Board

- (A) The Planning and Zoning Board may:
 - (1) Make studies and recommend to the City Council plans, goals and objectives relating to the growth, development and redevelopment of the City planning jurisdiction.
 - (2) Develop and recommend to the City Council policies, ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner.
 - (3) Make recommendations to the City Council concerning proposed zoning text and map changes, as provided by 8-3.
 - (4) Approve preliminary plats of major subdivision plats in accordance with the provisions of Section 15-3.3.

- (5) Perform any other duties assigned by the City Council or authorized by this Ordinance.
- (B) The Planning and Zoning Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Ordinance.

3-1.6 Advisory Committees

- (A) From time to time, the City Council may appoint one or more individuals to assist the Planning and Zoning Board to carry out its planning responsibilities with respect to a particular subject area.
- (B) Members of such advisory committees shall sit as nonvoting members of the Planning and Zoning Board when such issues are being considered and lend their talents, energies, and expertise to the Planning and Zoning Board. However, all formal recommendations to the City Council shall be made by the Planning and Zoning Board.
- (C) Nothing in this section shall prevent the City Council from establishing independent advisory groups, committees, or boards to make recommendations on any issue directly to the City Council.

3-2 BOARD OF ADJUSTMENT

3-2.1 Authority

There is hereby created a Board of Adjustment pursuant to NCGS 160A-388, to be known as the Shelby Zoning Board of Adjustment and referred to herein as the Board of Adjustment.

3-2.2 Appointment and Terms of Board of Adjustment

- (A) There shall be a Board of Adjustment consisting of eight (8) regular members and three (3) alternates. Two (2) regular members and one alternate shall be appointed by the Cleveland County Board of County Commissioners. Six (6) regular members and two (2) alternates shall be appointed by the Shelby City Council. The two (2) regular members and one alternate member appointed by the Board of County Commissioners shall reside within the Shelby extraterritorial planning and zoning jurisdiction area. The six (6) regular members and two (2) alternate members appointed by the City Council shall be residents of the corporate limits of the City of Shelby.
- (B) The Board of Adjustment regular members and alternates shall be appointed for three-year staggered terms, but both regular members and alternates may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms.
- (C) Regular Board of Adjustment members may be removed by the City Council at any time for failure to attend three consecutive meetings or for failure to attend fifty percent or more of the meetings within any twelve-month period or for any other good cause related to performance of duties. Alternate members may be removed for repeated failure to attend or participate in meetings when requested to do so in accordance with regularly established procedures.

- (D) If a member moves outside of the jurisdiction from which he has been appointed, that shall constitute a resignation from the Board, effective upon the date a replacement is appointed.
- (E) An alternate member may sit in lieu of a regular member. When so seated, alternates shall have the same powers and duties as regular members.
- (F) Members shall serve without any pay, but may be reimbursed for any expenses incurred while representing the Board of Adjustment.
- (G) If a larger number of extraterritorial members is needed to comply with the proportional representation requirements of NCGS 160A-362, the City Council shall submit to the Board of County Commissioners a resolution requesting that an additional member or members, as appropriate, be appointed. Proportional representation shall be determined by calculating the proportional relationship of the extraterritorial area population to the municipal population and applying that proportional relationship to the total membership of the Board of Adjustment. An additional member must be appointed to the Board of Adjustment to achieve proportional representation only when the population of the entire extraterritorial area constitutes a full fraction of the city's population divided by the total membership of the Board of Adjustment. Once the City of Shelby provides proportional representation, no power available to it under NCGS 160A-360 shall be ineffective in its extraterritorial area solely because county appointments have not yet been made. If the Board of County Commissioners fails to make appointments within 90 days after receiving a resolution from the City Council requesting that they be made, the City Council may make the appointments.

3-2.3 Jurisdiction and Decisions of the Board of Adjustment

- (A) The two (2) regular members and one (1) alternate member appointed to the Board of County Commissioners shall have jurisdiction only with respect to matters within the City's extra-territorial zoning jurisdiction area outside the City of Shelby.
- (B) On all matters pertaining to the incorporated area of the City of Shelby, only those members appointed by the City Council shall vote.

3-2.4 Meetings of the Board of Adjustment

- (A) The Board of Adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with procedures delineated in this Ordinance and in accordance with the *adopted Rules of Procedure of the City of Shelby Zoning Board of Adjustment*.
- (B) The Board shall conduct its meetings in accordance with the quasi-judicial procedures set forth in this Ordinance and in accordance with its bylaws.
- (C) All meetings of the Board shall be open to the public, and whenever feasible the agenda for each Board meeting shall be made available in advance of the meeting.

3-2.5 Quorum

- (A) A quorum for the Board of Adjustment shall consist of the number of members equal to four-fifths of the regular Board membership (excluding vacant seats). A quorum is

necessary for the Board to take official action.

- (B) On all matters pertaining to the incorporated area of the City of Shelby, five (5) members of the in-city Board membership shall constitute a quorum. Seven (7) members of the entire Board membership shall constitute a quorum on all matters pertaining to the extraterritorial zoning area outside the City of Shelby.
- (C) A member who has withdrawn from the meeting without being excused as provided in Section 3-2.6 shall be counted as present for purposes of determining whether a quorum is present.

3-2.6 Voting

- (A) The concurring vote of four-fifths of the regular Board membership (excluding vacant seats) shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance (including the issuance of a conditional use permit) or to grant any variance. On all matters pertaining to the incorporated area of the City of Shelby, only those Board members representing the City of Shelby shall vote. The concurring vote of four-fifths of the members of the in-city Board membership shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance (including the issuance of a conditional use permit) or to grant any variance. On all matters pertaining to the extraterritorial zoning area outside the City of Shelby, the concurring vote of four-fifths of the members of the entire Board membership shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance (including the issuance of a conditional use permit) or to grant any variance. All other actions of the Board shall be taken by majority vote, a quorum being present.
- (B) Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with subsection (C) or has been allowed to withdraw from the meeting in accordance with subsection (D).
- (C) A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:
 - (1) If the member has a direct financial interest in the outcome of the matter at issue; or
 - (2) If the matter at issue involves the member's own official conduct; or
 - (3) If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or
 - (4) If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.

- (D) A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.
- (E) A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.
- (F) A roll call vote shall be taken for each motion.

3-2.7 Board of Adjustment Officers

- (A) A chairman shall (1) be elected from among the entire membership of the Board of Adjustment, (2) be a regular member representing the City of Shelby, (3) serve for one year beginning July 1st, and (4) be eligible for reelection. The Chairman shall preside at regular and special meetings, shall have a vote in matters coming before the Board, and shall decide points of order and procedure subject to the adopted *Rules of Procedure of the City of Shelby Zoning Board of Adjustment*.
- (B) A vice-chairman shall be elected annually in a similar fashion to the chairman, have the same qualifications, and act in the absence of the chairman with the normal authority of the chairman.
- (C) The chairman or any member temporarily acting as chairman may administer oaths to witnesses coming before the Board.
- (D) The chairman and vice-chairman of the Board of Adjustment may take part in all deliberations and may vote on all issues.
- (E) A secretary shall be appointed by the Board, either from within or outside of the Board membership. The secretary shall keep the records and minutes of the Board meetings, cause proper notice to be made of cases for Board meetings, and shall conduct the correspondence for the Board.

3-2.8 Powers and Duties of Board of Adjustment

- (A) The Board of Adjustment shall hear and decide:
 - (1) Appeals from any order, decision, requirement, or interpretation made by the Zoning Administrator, as provided in Section 7-1.
 - (2) Applications for conditional use permits, as provided in Section 4-7.
 - (3) Applications for general variances, as provided in Section 7-2 and applications for variances from watershed district overlay requirements as provided in Section 7-2.3.
 - (4) Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines, as provided in Section 2-3.2.
 - (5) Applications for a special exception, as provided in Section 6-3.3.

- (6) Any other matter the Board is required to act upon by any other City ordinance.
- (B) The Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Ordinance.

3-3 ZONING ADMINISTRATOR

3-3.1 Establishment

Except as otherwise specifically provided, primary responsibility for administering and enforcing this Ordinance may be assigned to one or more individuals by the City manager. The person or persons to whom these functions are assigned shall be referred to in this Ordinance as the 'Zoning Administrator.' The terms 'staff' and 'administrator' are sometimes used interchangeably with the term 'Zoning Administrator.'

3-3.2 Duties of the Zoning Administrator

The Zoning Administrator shall:

- (A) Establish and publish application procedures for permits, appeals, and actions pursuant to this Ordinance and forms implementing the same;
- (B) Issue permits and certificates pursuant to this Ordinance;
- (C) Review all development plans and permits to assure that the permit requirements of this Ordinance have been satisfied;
- (D) Interpret the applicability of the provisions of this Ordinance in matters where the text does not clearly provide guidance;
- (E) Maintain all records pertaining to the provisions of this Ordinance in his office(s) and make said records open for public inspection;
- (F) Periodically inspect properties and activities for which permits have been issued to determine whether the use(s) is being conducted in accordance with the provisions of this Ordinance;
- (G) Cause to be investigated violations of this Ordinance;
- (H) Enforce the provisions of this Ordinance;
- (I) Issue notice of corrective action(s) when required;
- (J) Use the remedies provided in this Ordinance to gain compliance;
- (K) Be authorized to gather evidence in support of said activities;
- (L) Receive appeals and forward cases to the appropriate Board;
- (M) Perform the specific flood damage prevention duties delineated in Section 10-2.7; and

(N) Perform other duties as may be assigned by the City Council.

3-4 COMMUNITY DEVELOPMENT DIRECTOR

3-4.1 Establishment and Duties

As provided in Article XV, the Director of the Community Development Department is authorized to approve minor and major subdivision final plats and to perform other duties as authorized by this Ordinance.

3-5 CITY ENGINEER

3-5.1 Establishment and Duties

As provided in Article XV, the City Engineer is authorized to approve proposed water and sewer systems, drainage systems, and street layouts and to perform other duties as authorized by this Ordinance.

3-6 CITY COUNCIL

3-6.1 Duties of the City Council

- (A) The City Council, in considering special use permit applications, acts in a quasi-judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Section 4-7 of this Ordinance. In considering amendments to this Ordinance or the zoning map, the City Council shall follow the regular, voting, and other requirements as set forth in other provisions of general law.
- (B) In considering proposed changes in the text of this Ordinance or in the zoning map, the City Council acts in its legislative capacity and must proceed in accordance with the requirements of Article VIII.
- (C) The City Council, in considering the approval of a site specific development plan (as defined in Section 4-15 Vested Rights), shall follow the procedural requirements set forth in Section 4-7 of this Ordinance for the issuance of a special use permit.
- (D) As provided in Article XV, the City Council is authorized to decide upon the approval of minor and major subdivision plats in cases where the applicant has been denied approval by the Community Development Director or the Planning and Zoning Board.
- (E) The City Council is authorized to decide upon waivers to the provisions of Article XV in accordance with the standards delineated in Section 15-8.