



Town of Elon Planning Board Agenda

February 18, 2020
6:00 PM
Town Hall
104 S. Williamson Avenue

Agenda Items

A. Call to Order

B. New Business

- i. Swearing-in and Introduction of New Members John Harmon and Phillip Owens
- ii. Training Presentation for all members

C. Items from Board Members

D. Board of Aldermen Updates

E. Motion to Adjourn

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The Elon Planning Board and Board of Adjustment

POWERS, DUTIES, AND RESPONSIBILITIES

Topics

1. Types of Local Government Decisions
2. The Planning Board
3. The Board of Adjustment
5. Quasi-Judicial Procedure





Types of Local Government Decisions

1. Legislative
2. Quasi-Judicial
3. Administrative
4. Advisory

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Legislative Decisions

- ▶ This type of decision generally involves broad policy decisions.
- ▶ The Board of Aldermen has broad discretion to approve or deny legislative requests.
- ▶ Includes rezonings, zoning map and ordinance text amendments.



Quasi-Judicial Decisions

- ▶ This type of decision typically involves the application of Town policy (i.e. ordinances) to a defined project.
- ▶ These decisions are made by applying the Town's standards to unique facts and involve some discretion by the decision maker.
- ▶ Includes variances, appeals of staff decisions, special use permits, and major development plan approval.



Administrative Decisions

- ▶ These are sometimes called ministerial decisions.
- ▶ Town staff make these decisions; there is little discretion to approve or deny.
- ▶ Includes certificates of zoning compliance, building permits, and minor subdivision plat approvals.



Advisory Decisions and Nonbinding Resolutions

- ▶ These decisions are nonbinding.
- ▶ An advisory opinion is any recommendation given by a Town advisory board, for example zoning recommendations given by the Planning Board.
- ▶ The Board of Aldermen can also adopt nonbinding resolutions.



The Planning Board



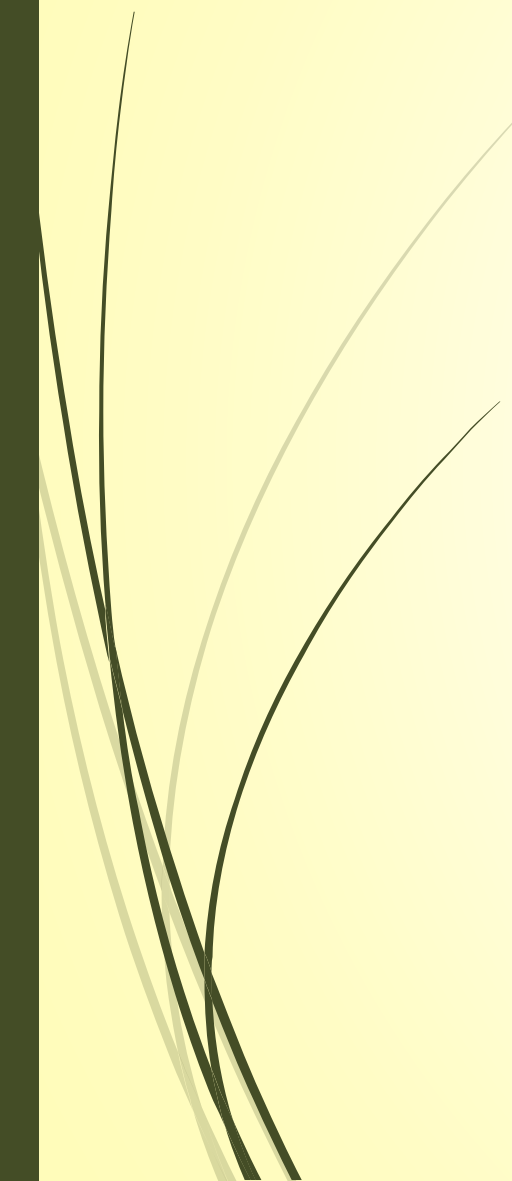
- ▶ Planning Boards are required by statute for all towns with zoning.
See G.S. § 160A-361 and 160A-387 in handout.
- ▶ The Planning Board is also governed by LDO 8.2.4
- ▶ The Board of Adjustment is governed by LDO 8.2.5
See handout.

What Governs and Guides the Planning Board?

1. The Elon Land Development Ordinance.
2. For all rezonings, text amendments and major development plans, staff will provide you with a staff report and prompts for the process for making recommendations to the Board of Aldermen.
3. The Planning Board Rules of Procedure – in LDO Sec. 8.2. (see handout).
4. The General Statutes.
*** Your own experience and common sense.**



What Does the Planning Board Do?

- ▶ Duties vary by jurisdiction.
 - ▶ Makes recommendations on rezonings, LDO text amendments and major development plans.
 - ▶ Considers and makes recommendations to the Board of Aldermen on all issues and petitions related to the Land Use Plan or other related plans, studies or other matters as directed by the Board of Aldermen.
 - ▶ Reviews the LDO and makes recommendations for changes.
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The Board of Adjustment

- ▶ Hears appeals of administrative decisions. See LDO Sec. 8.2.5.2.A.
- ▶ Considers variance requests. See LDO Sec. 8.2.5.2.B
- ▶ Interprets the Elon Land Use Map and on disputed issues regarding Planning District boundary lines. See LDO Sec. 8.2.5.2.B.



The Board of Adjustment

- ▶ The Board must elect a Chair, and electing a Vice-Chair is strongly recommended.
- ▶ It is strongly recommended that the Board adopt its own rules of procedure.

What Governs and Guides the Board of Adjustment?

- ▶ The Board is governed by the LDO and G.S. 160A-388. (See handout).
- ▶ All matters coming before the Board of Adjustment are quasi-judicial.
- * **Your own experience and common sense.**

Appeals

- ▶ *De novo* review – starting from the beginning or reviewing as if for the first time (not bound by the interpretation of the LDO Administrator).
- ▶ On appeals, you have the same authority as the LDO Administrator, no more or less.

Standards for Granting a Variance

G.S. § 160A-388(d): Variances. - When unnecessary hardships would result from carrying out the strict letter of a zoning 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.

The Rules for Voting Have Changed

- ▶ Previously, the Board of Adjustment could only take action on any item before it with a 4/5 majority vote.
- ▶ Now a 4/5 majority is required only to grant a variance. All other decisions require only a simple majority. G.S. § 160A-388(e).

Quasi-Judicial Procedure



“OK, that’s five votes in favor of saving the historic old hotel, and one vote for stomping it to bits and eating everyone inside!”

Quasi-Judicial Procedure In General

- ▶ “Quasi-judicial decisions involve the application of ordinance policies to individual situations rather than the adoption of new policies.”*
- ▶ These proceedings are like miniature court hearings. The applicant’s due process rights must be protected, and the Board must base its decision only on substantial, competent and material evidence in the record.
- ▶ Governing Authorities:
LDO 8.2.2, 8.2.5, and 8.5;
G.S. § 160A-388 and 160A-393.
(See handout)



*David W. Owens. *Land Use Law in North Carolina*, 2nd ed., p. 5. (UNC-School of Government 2011).

Prior to the Hearing...

Board members must disclose relevant information, including:

- ▶ ***Ex parte*** communications (communication outside of the hearing);
- ▶ Site visits;
- ▶ Specialized relevant knowledge; and
- ▶ Possible conflicts of interest including:
 - ▶ Having a fixed opinion prior to the hearing 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.

See G.S. 160A-388(e2) in handout.

How Formal Does the Hearing Have to Be?

- ▶ Quasi-judicial decisions are similar to court hearings in that due process protections such as the rights to a hearing, present evidence and cross examination apply, but the rules of evidence do not apply.
- ▶ Exhibits and other evidence should be submitted prior to the hearing if possible, but evidence may also be submitted during the hearing.

Responsibilities of the Chair

- ▶ The Chair presides over the hearing and recognizes speakers and members of the Board before they may be heard.
- ▶ The Chair rules on objections or requests.
- ▶ The Chair should allow every speaker to be heard, but may limit and/or cut off evidence or testimony that is irrelevant, repetitive, incompetent, inflammatory, or hearsay.

Responsibilities of the Chair

- ▶ The Chair may also place reasonable limitations on the presentation of evidence, arguments, and cross-examination. But the applicant must be given sufficient opportunity to present the evidence needed to support his/her application.
- ▶ Practice Tip: If the Chair knows that a particular hearing will be contentious, he or she may, with the advice of the Board's attorney, work with the parties to establish hearing guidelines prior to the hearing.

Evidence and Testimony

- ▶ All witnesses and presenting staff must be sworn in.
- ▶ Decisions must be based on **substantial, competent and material** evidence in the record.
- ▶ The parties can direct examine and cross-examine witnesses.
- ▶ After the public hearing has been closed, no new evidence may be introduced, but Board members may ask clarifying questions.



Lay Versus Expert Testimony

- ▶ General rule: Anyone with material knowledge can provide factual information, but only experts can provide opinion testimony.
- ▶ Lay witnesses can provide opinion testimony, but this testimony is generally incompetent unless it is corroborated by competent evidence.
- ▶ Even expert testimony must be competent and material before the Board can rely on it.

Lay Versus Expert Testimony

- ▶ Exception: G.S. § 160A-393(k)(3) now requires expert testimony in three cases, including the following:
 - ▶ The use of property in a particular way would affect the value of other property;
 - ▶ The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety; and
 - ▶ Matters about which only expert testimony would generally be admissible under the rules of evidence.

You don't have to be Matlock to cross-examine someone...

- ▶ The Board can only base its decision on what is in the record, so if you think evidence is missing on a key point, you should ask as many questions as necessary to get evidence in the record on that issue.




Rendering a Decision

- ▶ The Board must make findings of fact and render conclusions as to each standard for approvals. The better practice is to do the same for denials.
- ▶ Key factual findings **cannot** be based solely on nonexpert opinion evidence and/or unsupported allegations.

Rendering a Decision

- ▶ Precedent: “The general rule is that prior decisions are not legally binding on the board. However, similar cases should generally produce similar results, and it is incumbent on a board to know how and why prior cases have been decided.”*
- ▶ *Res Judicata* applies. In other words, a denial may be reconsidered only if there is a material change in the applicable standards or conditions.

*Owens, p. 158.



Need More Information? Have Questions?

Contact Pamela DeSoto at (336) 584-2859
or at
pdesoto@elon.gov

**Town of Elon
Board of Aldermen
Regular Meeting**

AGENDA ITEMS

**February 11, 2020
Municipal Building, 6:00 PM**

BOARD ACTION REPORT

I. CALL TO ORDER

II. MOTION TO APPROVE BY REFERENCE THE ITEMS LISTED WITHIN THE CONSENT AGENDA

- A. Annexation Certificate of Sufficiency (Holt Property) - DiAnne Enoch
The Board receives the certification of ownership. **APPROVED**

III. PUBLIC COMMENT(S)

- *The public may speak on any non-agenda item up to three minutes.*
- *An agenda item will only be discussed at its appropriate time.*
- *Public Hearing items can only be discussed during the public hearing.*
- *Be sure to sign in, stand, and state your name and address for the Minutes.*

IV. ORDINANCE(S) AND RESOLUTION(S)

- A. Resolution Fixing the Date of a Public Hearing on a Question of Annexation (Holt Property) - presenter Pam DeSoto **ADOPTED**
- Proposed Public Hearing Date, **April 6, 2020.**

V. OLD BUSINESS

- A. Town of Elon Strategic Plan Revision - presenter Rich Roedner
- Safety Component. **APPROVED**

VI. NEW BUSINESS

- A. Town Hall Box Sign - presenter Kathleen Patterson **APPROVED**
- Information to refurbish and repair the sign in front of Town Hall.
- B. Ad Valorem Tax Advertisement – presenter Misty Hagood **APPROVED**
- 2019 Delinquent Real Estate Taxes
- C. Ten Year Tax Release - 2009 - presenter Misty Hagood **APPROVED**
- Uncollectable 10 years old unpaid personal property taxes.
- D. Planning Board Appointments - presenter Pam DeSoto **APPROVED**
- To fill two vacant seats.
- E. Quarterly Transportation Update - presenter Pam DeSoto **ACCEPTED**
- To provide information and request Board input.

VII. REPORTS

- A. Town Manager
- B. Mayor and Board of Aldermen

VIII. ADJOURNMENT